Pt. III — Pt. only.

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The Calcutta Gazette

THURSDAY, OCTOBER 3, 1929.

Part III

Acts of the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2670L., dated Darjeeling, the 28th September, 1929.—In pursuance of the provisions of sub-section (*3*) of section 81 of the Government of India Act, the following Act of the local legislature of Bengal, having been assented to by the Governor-General on the 21st September, 1929, is hereby published for general information:—

BENGAL ACT III OF 1929.

THE BENGAL CHILDREN (AMENDMENT) ACT, 1929.

An Act further to amend the Bengal Children Act, 1922, with a view to establish central Courts for the trial of offences thereunder.

WHEREAS it is expedient further to amend the Bengal Children Act, 1922, with a view to establish central Courts for the trial of offences thereunder; Ben. Act II of 1922.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (*3*) of section 80A of the Government of India Act to the passing of this Act; 5 & 6 Geo. V, C. 61; 6 & 7 Geo. V, C. 37; 9 & 10 Geo. V, C. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Children (Amendment) Act, 1929.

Amendment of section 3 of Bengal Act II of 1922.

2. After clause (*3*) of section 3 of the Bengal Children Act, 1922 (hereinafter referred to as the said Act), the following clause shall be inserted, namely:—

"(*3a*) 'Juvenile Court' means a separate Court established under sub-section (*1*) of section 37, and includes a Court sitting in the manner provided by sub-section (*2*) of that section."

(4) (A3039)

The Bengal Children (Amendment) Act, 1929.

(*Sections 3-8.*)

Amendment of section 4.

3. For clause (*d*) of section 4 of the said Act, the following shall be substituted, namely:—

"(*d*) a separate Court established under sub-section (*1*) of section 37.".

Amendment of section 37.

4. (*1*) In sub-section (*1*) of section 37 of the said Act, for the words "The Local Government may provide for the establishment for any district or other local area" the following shall be substituted, namely:—

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, the Local Government may, by notification in the *Calcutta Gazette*, provide for the establishment for any district or any other area specified in the notification." Act V of 1898.

(*2*) Sub-section (*3*) of the said section 37 shall be omitted.

New section 37A.

5. After section 37 of the said Act, the following shall be inserted, namely:—

"37A. Any child or young person charged with an offence may, pending trial or on conviction, be detained in the prescribed manner in a place, whether in Calcutta or elsewhere, to be set apart by the Local Government for the detention of children or young persons."

Detention of child or young person pending trial or on conviction.

Amendment of section 48.

6. In clause (*o*) of sub-section (*2*) of section 48 of the said Act after the word "trial" the words "or on conviction" shall be inserted.

Amendment of section 49.

7. (*1*) In sub-section (*1*) of section 49 of the said Act, for the words and figures "An appeal from an order made by a Court under sections 25, 27, 31 or 39 shall lie" the following shall be substituted, namely:—

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an appeal from an order made by a Court under the provisions of this Act shall lie." Act V of 1898.

(*2*) After the said sub-section the following sub-section shall be inserted, namely:—

"(*1a*) Notwithstanding anything contained in the said Code, or in sub-section (*1*), an appeal from an order made by a separate Court established under section 37, sub-section (*1*), shall lie to the District Magistrate within the local limits of whose jurisdiction such Juvenile Court is held or to the Chief Presidency Magistrate when such Court is held within the local limits of his jurisdiction."

Amendment of section 50.

8. In section 50 of the said Act after the words "District Magistrate" the words "or of the Chief Presidency Magistrate" shall be inserted.

J. BARTLEY,

Secy. to the Govt. of Bengal,
Legislative Department.

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THURSDAY, JULY 25, 1929.

Part IV

Bills introduced in the Bengal Legislative Council, Reports of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 1938L., dated Calcutta, the 19th July 1929.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information.

THE BENGAL (RURAL) PRIMARY EDUCATION BILL, 1929.

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THE BENGAL (RURAL) PRIMARY EDUCATION BILL, 1929.

A

BILL

to provide for the extension of primary education in rural areas in Bengal.

WHEREAS it is expedient to make better provision for primary education in rural areas in Bengal;

AND WHEREAS the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6 Geo. V. c. 61; 6 & 7 Geo. V. c. 37; 9 & 10 Geo. V. c. 101.

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

Short title, local extent and commencement.

1. (*1*) This Act may be called the Bengal (Rural) Primary Education Act, 1929. [*Cf.* Ber. Act V of 1919, s. 1.]

(*2*) It extends to the whole of Bengal, except the town of Calcutta and any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, 1884. Ben. Act III of 1884.

(*3*) It shall come into force, in whole or in part, in such districts or parts of districts on such dates as the Local Government may, by notification, direct and for this purpose different dates may be appointed for different provisions of this Act and for different districts, or parts of districts. [*Cf.* Ben. Act II of 1922, s. 1.]

Explanation.—The words "the town of Calcutta" mean, subject to the inclusion of any local area by notification under section 543 of the Calcutta Municipal Act, 1923, and subject to the provisions of section 147 of the Calcutta Improvement Act, 1911, the area described in Schedule I to the Calcutta Municipal Act, 1923: Ben. Act III of 1923. Ben. Act V of 1911.

Provided that this Act shall not come into force in any cantonment without the previous sanction of the Governor General in Council.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "attendance" at a school means presence for instruction at a primary school for so many and on such days in the year and at such time or times on each day of attendance as may be required by the prescribed educational authority after consulting the Attendance Committee;

(*2*) "Board" means a District School Board constituted under this Act;

(*3*) "child" means a child who is not less than six and not more than eleven years of age or other prescribed age; [*Cf.* B. & O. Act I of 1919.]

(*4*) "Committee" means the Central Primary Education Committee constituted under this Act;

The Bengal (Rural) Primary Education Bill, 1929.

(Chapter II.—The Central Primary Education Committee.—Clause 3.)

(5) "Director of Public Instruction" means the officer designated by this name by the Local Government for the purposes of this Act;

(6) "district" has the same meaning as in section 4 of the Cess Act, 1880; Ben. Act IX of 1880

(7) "District Board" means a District Board constituted under the Bengal Local Self-Government Act of 1885; Ben. Act III of 1885

(8) "District Inspector of Schools" means the local executive educational officer in charge of primary education in each district responsible to the Director of Public Instruction;

(9) "financial year" means a year beginning on the first day of April;

(10) "guardian" means any person to whom the care, nurture or custody of any child falls by law or by natural right or recognised usage, or who has accepted or assumed the care, nurture or custody of any child or to whom the care or custody of any child has been entrusted by any lawful authority; [*Cf.* Mad. Act VIII of 1920, s. 3 (*viii*).]

(11) "notification" means a notification published in the *Calcutta Gazette;*

(12) "Panchayat" means a Panchayat appointed under the Village Chaukidari Act, 1870; Ben. Act VI of 1870.

(13) "prescribed" means prescribed by rules made under this Act;

(14) "primary education" means education in such subjects and up to such standards as may be prescribed;

(15) "primary school" means a school or department of a school giving instruction in primary education either managed by the Board or recognised as a primary school under section 53;

(16) "public management" in relation to a primary school means management by the Government, or by a District School Board either directly or through its power of delegation to a Union Board, a Union Committee or a Panchayat; all other management shall be deemed to be "private management"; [*Cf.* Mad. Act VIII of 1920, s. 3 (*xiii*).]

(17) "subdivision" has the same meaning as in the Code of Criminal Procedure, 1898; Act V of 1898.

(18) "Union Board" means a Union Board constituted under the Bengal Village Self-Government Act, 1919; Ben. Act V of 1919.

(19) "Union Committee" means a Union Committee constituted under the Bengal Local Self-Government Act of 1885.

CHAPTER II.

The Central Primary Education Committee.

Establishment of the Central Primary Education Committee.

3. A Committee, to be called the Central Primary Education Committee, shall be constituted in the manner hereinafter provided, for the purpose of advising the Local Government on all matters which may be or are to be referred to it under this Act.

The Bengal (Rural) Primary Education Bill, 1929.

(*Chapter II.—The Central Primary Education Committee.—Chapter III.—The District School Board. —Clauses 4—6.*)

Constitution of the Committee.

4. (*1*) The Committee shall be constituted for five years at a time and shall consist of the following members, namely:—

(*a*) the Director of Public Instruction, Bengal, *ex officio*,

(*b*) ten members of whom two shall be elected in the prescribed manner from each of the five divisions of the Province by the members of the District School Boards of each division, one to be a Muhammadan and the other a Hindu,

(*c*) five members to be appointed by the Local Government, of whom two shall be representatives of the depressed classes and three shall be persons possessing experience in educational matters.

(*2*) If by such date as the Local Government may fix, any of the electoral bodies referred to in clause (*b*) of sub-section (*1*) fails to elect a person to be a member of the Committee, the Local Government shall appoint a suitable person in his place and any person so appointed shall be deemed to be a member as if he had been duly elected by such body.

Functions of the Committee.

5. The Local Government may refer any matter to the Committee for its opinion, and shall consult the Committee before making an order under section 21, section 22, or section 50, or a notification under section 55, or a rule under section 65.

CHAPTER III.

The District School Board.

Constitution of the Board.

6. When this section comes into force in any district the Local Government shall establish for such district a District School Board consisting of the following members, namely:—

(*a*) the District Magistrate, *ex officio;*
Provided that, on the expiration of two terms of four years mentioned in sub-section (*2*) of section 10 after the first establishment of the Board, the District Magistrate shall cease to be an *ex officio* member of the Board;

(*b*) the Subdivisional Magistrates, *ex officio;*

(*c*) the District Inspector of Schools, *ex officio;*

(*d*) the Chairmen of the Local Boards, *ex officio;*

(*e*) the Chairman and the Vice-Chairman of the District Board, *ex officio;*

(*f*) as many members as there are subdivisions in the district to be elected in the prescribed manner by the members of the District Board:

Provided that the number shall in no case be less than two.

(*g*) one member for each subdivision to be elected in the prescribed manner by the members of the Union Boards, Union Committees and Panchayats within the subdivision from amongst the members of such Union Boards, Union Committees and Panchayats:

Provided that the number shall in no case be less than two.

The Bengal (Rural) Primary Education Bill, 1929.

(Chapter III.—The District School Board.—Clauses 7—10.)

(*h*) as many members as there are subdivisions in the district to be appointed by the Local Government:

Provided that the number shall in no case be less than two; and

(*i*) one teacher of a primary school to be appointed by the Local Government for the first term of four years referred to in sub-section (*2*) of section 10 and thereafter to be elected in the prescribed manner by the teachers of primary schools.

Procedure in default of election of members.

7. If, by such date as may be fixed by the Local Government— [*Cf.* Ben Act XII of 1923, s. 2(*5*).]

(*i*) the members of the District Board do not elect the members referred to in clause (*f*) of section 6,

(*ii*) the members of Union Boards, Union Committees and Panchayats do not elect the members referred to in clause (*g*) of section 6,

(*iii*) the teachers of primary schools do not elect the member referred to in clause (*i*) of section 6, after the expiration of first term of four years mentioned in sub-section (*2*) of section 10 after the first establishment of the Board,

the Local Government shall appoint suitable persons to be such members, and any persons so appointed shall be deemed to be members as if they had been duly elected by the members of the District Board or of Union Boards, Union Committees and Panchayats, or by the teachers of primary schools as the case may be.

President and Vice-President.

8. (*1*) There shall be a President of the Board, who shall, until the expiration of two terms of four years mentioned in sub-section (*2*) of section 10 after the first establishment of the Board, be a member of the Board appointed in that behalf by the Local Government, and shall thereafter be a member of the Board elected in that behalf by the Board in the prescribed manner and approved by the Local Government. [*Cf.* Govt. of India Act, s. 63 (*1*).]

(*2*) The Board may from time to time elect, for such period as it thinks fit, one of its members to be Vice-President.

Elections and appointments to be notified in *Calcutta Gazette*.

9. The names of the President, the Vice-President and of the appointed and elected members of the Board or, where the President has been appointed *ex officio* or a member is an *ex officio* member, the office by virtue of which he has been appointed President or is a member, shall be published by the Local Government in the *Calcutta Gazette*. [*Cf.* Ben. Act XII of 1923, s. 2(*4*).]

Term of office.

10. (*1*) The Vice-President and any other appointed or elected member may resign his office by giving notice in writing to the President, and, on such resignation being accepted by the President, shall be deemed to have vacated his office. [*Cf.* Mad. Act VIII of 1920, s. 9 (*1*).]

(*2*) Subject to the provisions of this Chapter, the appointed or elected members shall hold office for a term of four years, and may, on the expiration of such term, be re-appointed or re-elected.

(*3*) Notwithstanding the expiration of the term of four years mentioned in sub-section (*2*) an appointed or elected member shall continue to hold office until the vacancy caused by the expiration of the said term has been filled.

The Bengal (Rural) Primary Education Bill, 1929.

(Chapter III.—The District School Board.—Clauses 11—16.)

Removal of members.

11. (*1*) The Local Government may, by notification, remove a President, Vice-President, or member of the Board if he— [*Cf.* Mad Act VIII of 1920, s. 10.]

(*a*) refuses to act or becomes incapable of acting as a member of the Board;

(*b*) is declared insolvent;

(*c*) has been or is convicted of any such offence or has been or is subjected by a criminal court to any such order as in the opinion of the Local Government implies a defect of character which unfits him to become or to continue to be a President, Vice-President or member of the Board; or

(*d*) without excuse sufficient in the opinion of the Local Government, is absent without the consent of the Board from more than six consecutive meetings of the Board.

(*2*) The Local Government may fix a period during which any person so removed shall not be eligible for re-appointment or re-election.

Casual vacancies.

12. When the place of an appointed or elected member of the Board becomes vacant by his removal, resignation or death, a new member shall be appointed or elected in the manner provided in section 6, and shall hold office so long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred: [*Cf.* Ben. Act V of 1919, s. 13.]

Provided that no act of the Board, or of its officers, shall be deemed to be invalid by reason only that the number of members of the Board at the time of the performance of such act was less than the number provided by section 3.

Travelling allowance.

13. Members (other than *ex officio* members who are Government officers) and the establishment of a Board shall be entitled to travelling allowance of the prescribed amount to be paid in the prescribed manner from the District Primary Education Fund for expenses incurred by them in attending meetings of the Board or in performing any duty assigned to them by the Board for the purposes of this Act. [*Cf.* Mad. Act VIII of 1920, s. 1.]

Board to be a body corporate.

14. Every Board shall be a body corporate by the name of "the District School Board of (name of district)," shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire and hold property, both movable and immovable, and, subject to the prescribed conditions, to transfer any property held by it and to contract and do all other things necessary for the purposes of this Act. [*Cf.* Mad. Act VIII of 1920, s. 12.]

President at meetings.

15. (*1*) The President, or, in his absence, the Vice-President, shall preside at every meeting of the Board, and shall have a second or casting vote in all cases of equality of votes. [*Cf.* Ben. Act III of 1923, s. 62.]

(*2*) In the absence of both the President and Vice-President, the members present at any meeting shall elect one of their number to preside, who shall have a second or casting vote in all cases of equality of votes.

Meetings of Board to be public.

16. All meetings of the Board shall be open to the public: [*Cf.* Mad. Act VIII of 1920, s. 16.]

Provided that the person presiding may in any particular case, for reasons to be recorded in writing,

direct that the public generally or any particular person shall withdraw.

Interested members not to vote.

17. No member of the Board shall vote on any question coming before the Board for consideration in which (otherwise than in its general application to all persons and properties within the district) he has a pecuniary interest. [*Cf.* Mad. Act VIII of 1920, s. 17 (4).]

Duties of President and Vice-President.

18. (*1*) All orders of the Board shall be carried into effect by the President, in whom the entire executive power of the Board shall be vested and who shall be responsible for giving effect to such orders. [*Cf.* Mad. Act VIII of 1920, s. 19.]

(*2*) The President shall not exercise any power which by this Act is expressly declared to be exercise-able by the Board.

(*3*) The President may authorise the Vice-President by an order in writing to exercise any of the powers conferred or to perform any of the duties imposed on the President by this Act and thereupon the responsibility of the President in respect of such powers and duties shall devolve upon the Vice-President during the continuance of such order.

(*4*) When the office of President is vacant the Vice-President shall exercise the functions of the President until a new President is appointed.

Power of Board to make regulations.

19. (*1*) Every Board may make regulations in regard to the following matters, namely:— [*Cf.* Mad. Act VIII of 1920, s. 29.]

(*i*) the time and place of its meetings;

(*ii*) the manner in which notice of meetings shall be given;

(*iii*) the conduct of proceedings at meetings;

(*iv*) the division of duties among the members of the Board;

(*v*) the appointment, duties and procedure of special committees consisting wholly of members of the Board or partly of such members and partly of residents within the local jurisdiction of the Board;

(*vi*) the persons by whom receipts may be granted for money paid to the Board;

(*vii*) the inspection by members of the Board of primary schools situated within its jurisdiction and the inspection of accounts, books, registers, returns, reports and other documents, appertaining to such schools; and

(*viii*) the carrying out of the purposes of this Act.

(*2*) Any regulation made under sub-section (*1*) which is repugnant to the provisions of any rule made under section 65 shall, to the extent of such repugnancy, but not otherwise, be void.

Control by Commissioner.

20. The Commissioner of the Division may, by order in writing, suspend the execution of any resolution or order of a Board situate within his jurisdiction and prohibit the doing or completion of any act which is about to be done, or is being done within such jurisdiction in pursuance of or under cover of, this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law. [*Cf.* Ben. Act III of 1884, s. 63.]

Control by Local Government.

21. (*1*) If at any time it appears to the Local Government that a Board or its President has made default in performing any duty imposed by or under this Act, the Local Government may, by an order in writing, fix a period for the performance of such duty. [*Cf.* Mad. Act VIII of 1920, s. 22.]

The Bengal (Rural) Primary Education Bill, 1929.

(Chapter III.—The District School Board.—Clauses 22, 23.)

(2) If the duty is not performed within the period so fixed, the Local Government may appoint a person to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to such person by the Board.

(3) If the expense is not so paid, the Local Government may make an order directing the person having the custody of the District Primary Education Fund to pay to the person appointed under sub-section (2) such expense in priority to any other charges against such fund, and he shall, so far as the funds to the credit of the Board admit, comply with the order of the Local Government.

Supersession of Board.

22. (1) If at any time it appears to the Local Government that a Board is not competent to perform or persistently makes default in the performance of, the duties imposed upon it by or under this or any other Act, or exceeds or abuses its powers, the Local Government may, by an order in writing, specifying the reasons for so doing, remove all appointed and elected members of such Board and direct that the vacancies shall thereupon be filled by election in respect of elected members and by appointment in respect of appointed members or that all the vacancies shall be filled by appointment. [*Cf.* Mad. Act VIII of 1920, s. 24; Ben. Act III of 1885, s. 131.]

(2) From the date of an order under sub-section (1) until the vacancies are filled— [*Cf.* Ben. Act V of 1919, s. 57.]

(a) all powers and duties of the Board shall be exercised and performed by, and

(b) all property vested in the Board shall vest in,

such person, in such manner, as the Local Government may direct.

Duties of Boards.

23. (1) It shall be the duty of every Board— [*Cf.* Mad. Act VIII of 1920, s. 24.]

(a) to prepare and maintain a register showing all primary schools within the district, together with the teachers thereof and their qualifications and the accommodation available therein;

(b) to tabulate such further information and to prepare such plans or maps as may be necessary to enable the Board to frame an estimate of the existing provision for primary education and of the further provision necessary to place primary education within the reach of all children;

(c) to prepare in the prescribed manner schemes for the extension of primary education within the area under the authority of each Union Board, Union Committee or Panchayat;

(d) to arrange, in the prescribed manner, for the opening of additional primary schools and the expansion of existing primary schools with a view to giving effect as funds permit to such schemes;

(e) to maintain all primary schools under public management in the district, except primary schools maintained by Union Boards under the control of the Board;

(f) to construct, repair and manage, either directly or through its powers of delegation to Union Boards, Union Committees, and Panchayats, all primary schools under public management in the district;

(g) subject to the prescribed conditions, to appoint and fix and pay the salaries of teachers in primary schools;

The Bengal (Rural) Primary Education Bill, 1929.

(Chapter III.—The District School Board.—Clauses 24—27.)

(*h*) to grant recognition to schools in accordance with the provisions of section 53 or to withdraw recognition therefrom;

(*i*) to make grants in the prescribed manner for scholarships and stipends for primary schools;

(*j*) to consider and pass orders on all applications under section 54 for grants to primary schools under private management;

(*k*) to make grants to primary schools under private management;

(*l*) to prepare and transmit to the Director of Public Instruction proposals for increasing the supply of trained and certificated teachers;

(*m*) to advise upon all matters relating to primary education referred to the Board by the Director of Public Instruction;

(*n*) subject to the prescribed conditions,—

(*i*) to grant pensions and gratuities to,

(*ii*) to form and manage a provident or annuity fund for,

(*iii*) to compel contributions to such fund from, and

(*iv*) to supplement the contributions to such fund of,

the establishment of the Board and teachers in primary schools.

(*2*) The register referred to in clause (*a*) of subsection (*1*) shall be maintained and the information referred to in clause (*b*) thereof shall be tabulated separately for each area under the authority of a Union Board, Union Committee or Panchayat.

Reports to be made by Board.

24. Every Board shall in each financial year— [*Cf.* Mad Act VIII of 1920, s. 25.]

(*i*) frame and transmit to the Director of Public Instruction, by such date and in such form as he may direct, a statement showing for its district—

(*a*) the names of primary schools under private management for which grants have been sanctioned for that year; and

(*b*) the amount of the grant which has been sanctioned for each such school;

(*ii*) furnish a report to the Director of Public Instruction, by such date and in such form as he may direct, exhibiting the grants which it has distributed to schools within the district.

Board to furnish other prescribed reports.

25. Every Board shall prepare and transmit to the Director of Public Instruction such further reports and statements as may be prescribed. [*Cf.* Mad Act VIII of 1920, s. 26.]

Power of Board to appoint, punish and dismiss its officers and servants.

26. (*1*) Subject to the prescribed conditions, a Board may appoint such staff of officers and servants other than inspectors as it may consider necessary to carry out its duties under this Act, and may fix and pay salaries to such staff. [*Cf.* Ben Act V of 1919, s. 36.]

(*2*) Subject to the prescribed conditions, a Board may punish or dismiss members of its staff.

Compulsory acquisition of land for the purposes of this Act.

27. The Local Government may, at the request of the President of the Board, acquire, under the provisions of the Land Acquisition Act, 1894, any land required for the purposes of this Act. [*Cf.* Ben. Act VI of 1920, s. 14.] I of 1894.

"Land" in this section has the same meaning as in clause (*a*) of section 3, of the Land Acquisition Act, 1894.

The Bengal (Rural) Primary Education Bill, 1929.

(Chapter III.—The District School Board.—Chapter IV. —Cess and Tax for Primary Education.—Clauses 28—31.)

Existing buildings, etc. for primary education to vest in District School Boards.

28. All buildings or other property, moveable or immovable in a district vested in or held by or under the control of a District Board at the date of the commencement of this Act for the purposes of primary education shall for the purposes of this Act, vest in or be held by or be under the control of the District School Board in that district:

Provided that in the event of a dispute arising whether any building or other property is so vested in or held by or under the control of a District Board at the date of the commencement of this Act, the question shall be referred to the Local Government whose decision thereon shall be final.

CHAPTER IV.

Cess and Tax for Primary Education.

Levy of primary education cess.

29. *(1)* In any district or part of a district in which the provisions of this Chapter are in force, all immovable property on which the road and public works cesses are assessed according to the provisions of the Cess Act, 1880, shall be liable to the payment of a primary education cess. Ben. Act IX of 1880.

(2) The primary education cess shall be levied at the rate of five pice on each rupee of annual value of land and of annual net profits from mines, quarries, tramways, railways and other immovable property as determined under the Cess Act, 1880.

Payment of cess.

30. *(1)* Except as otherwise provided in this Act the primary education cess shall be paid to the same persons in the same manner and at the same time as the road cess and public works cess are paid under the Cess Act, 1880.

(2) Every holder of an estate shall yearly pay to the Collector the entire amount of the primary education cess calculated on the annual value of the lands comprised in such estate at the rate provided in sub-section *(2)* of section 29 less a deduction to be calculated at one pice for every rupee of the revenue entered in the valuation roll of such estate as payable in respect thereof.

(3) Every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included the entire amount of the primary education cess calculated on the annual value of the land comprised in his tenure at the rate provided in sub-section *(2)* of section 29 less a deduction to be calculated at one pice for every rupee of the rent payable by him for such tenure.

(4) Every cultivating raiyat shall pay to the person to whom his rent is payable four-fifths of the said primary education cess calculated at the rate provided in sub-section *(2)* of section 29 upon the rent payable by him or upon the annual value, as ascertained under the provisions of the Cess Act, 1880, of the land held by him.

First imposition of primary education cess.

31. When the primary education cess is for the first time imposed in any district or part of a district the Collector of the district shall cause a notification to be published and a proclamation to be made in the manner provided by section 40 of the Cess Act, 1880, announcing such imposition, and shall cause to be served on the holder of every estate within the district

or part of the district concerned, a notice showing the amount of primary education cess payable in respect of his estate, and specifying the date from which such primary education cess will take effect:

Provided that no defect in the service of such notice shall affect the liability of any person or property to the payment of the primary education cess.

Provisions of Cess Act, 1880, to apply to assessment, etc., of education cess.

32. Subject to the provisions of this Chapter, the provisions of the Cess Act, 1880, shall apply as far as possible to the assessment, levy, payment and recovery of the primary education cess. Ben. Act IX of 1880.

Proceeds of cess to be paid into District Primary Education Fund.

33. The proceeds of the primary education cess in each district shall be paid by the Collector into the District Primary Eduaction Fund of such district.

Tax on trade, business or profession.

34. (*1*) The District Magistrate or one of his subordinate officers shall from time to time examine the assessment list prepared under section 16 of the Village Chaukidari Act, 1870, and shall consider the assessment made under section 38 of the Bengal Village Self-Government Act, 1919, and, after such inquiry as he considers necessary, shall prepare a list of all persons assessed to pay the chaukidari rate or the union rate, as the case may be, who, in his opinion, have been so assessed wholly or in part in respect of their trade, business or profession. Ben. Act VI of 1870. Ben. Act V of 1919.

(*2*) The District Magistrate shall assess a tax on each of such persons not exceeding rupees one hundred per annum.

(*3*) The amount of tax so assessed shall be communicated to the Union Board or Panchayat concerned, and the Union Board or Panchayat shall collect the tax as if it were the union rate or the chaukidari rate.

(*4*) Any arrears of the said tax may be recovered by any process enforceable for the recovery of an arrear of union rate or chaukidari rate.

(*5*) The Union Board or Panchayat shall remit the amount of tax realised under this section to the District Magistrate after deducting ten *per cent.* thereof to defray the cost of collection.

(*6*) The proceeds of the said tax in each district shall be paid by the District Magistrate into the District Primary Education Fund of such district.

Definitions.

35. For the purposes of this Chapter, the expressions "annual value of land," "cultivating *raiyat*," "estate," "holder of an estate or tenure" and "land" have the same meaning as in section 4 of the Cess Act, 1880.

CHAPTER V.

District Primary Education Fund.

District Primary Education Fund.

36. (*1*) There shall be formed for each district in which the provisions of this Chapter are in force, a fund to which shall be credited— [*Cf.* Mad Act VIII of 1920, s. 28.]

(*i*) all sums granted by the Local Government for the payment of grants to primary education;

(*ii*) all sums granted by the Local Government for the institution and maintenance of primary schools and for the payment of teachers in primary schools;

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(*Chapter V.—District Primary Education Fund.—Clauses 37, 38.*)

(*iv*) all sums granted by the Local Government for scholarships for children in primary schools;

(*v*) the proceeds of the primary education cess levied in the district;

(*vi*) the proceeds of the tax imposed under section 32;

(*vii*) all income derived from any endowments or other property owned or managed by the Board for the purposes of this Act;

(*viii*) the amount of all fines and penalties imposed under this Act;

(*ix*) all sums received by the Board under section 48;

(*x*) all school fees, if any, collected in primary schools maintained by the Board; and

(*xi*) all other sums of money which may be received by the Board under or for the purposes of this Act.

(*2*) The District Primary Education Fund shall become vested in the Board, be under its control and shall be held by it in trust for the purposes of this Act. [*Cf.* Ben. Act III of 1884, s. 67.]

Expenditure from District Primary Education Fund.

37. Except as otherwise provided in this Act, the District Primary Education Fund shall be applicable to the following objects in the following order:—

Firstly—the payment of any sums which the Board may be liable to pay as interest upon loans raised by it for the purposes of this Act and the formation of a sinking fund when required;

Secondly—the payment of the prescribed percentage of the cost of establishments entertained and expenses incurred by the Collector under section 91 of the Cess Act, 1880; Ben. Act IX of 1880.

Thirdly—the indemnification of the Collector with the sanction of the Commissioner of the Division from any of the costs, charges and expenses incurred by him under Chapter IV.

Fourthly—the payment of the cost or the prescribed percentage of the cost of audit;

Fifthly—the payment of salaries of the establishment of the Board and of teachers in primary schools and, subject to the prescribed conditions, of pensions, gratuities and grants made for supplementing contributions to the provident fund of the establishment of the Board and of teachers in primary schools;

Sixthly—the payment of travelling allowance to members of the Board and its establishment as provided in section 13;

Seventhly—the payment of expenses incurred by the Board in the construction, equipment and maintenance of primary schools; and

Eighthly—generally, the carrying out of the purposes of this Act.

Administration of District Primary Education Fund.

38. (*1*) All moneys payable to the credit of the District Primary Education Fund shall forthwith be paid into the prescribed bank or Government treasury. [*Cf.* Mad. Act VIII of 1920, s. 33.]

(*2*) All orders or cheques upon the said Fund shall be signed by the President or by such person as he may authorise in writing in this behalf.

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(Chapter V.—District Primary Education Fund.—Chapter VI.—Audit.—Clauses 39—44.)

(3) No money shall be spent from this Fund—

(a) except for the purposes of this Act, and

(b) unless its expenditure is provided for—

(i) in the budget of the Board as approved by the Local Government under sub-section (2) of section 39, or

(ii) by reappropriation in the prescribed manner.

Budget.

39. (1) Every Board shall each year, prepare in the prescribed form a budget of income and expenditure of the Board for the ensuing financial year, and shall submit it to the Local Government through the Director of Public Instruction on or before the thirtieth day of November. [*Cf.* Mad. Act VIII of 1920, s. 36.]

(2) The Local Government may either approve of the budget as it stands, or approve of it after making such alterations (if any) as it may think fit or may cause it to be returned to the Board for such modifications as the Local Government may think necessary, and, when such modifications have been made, the budget shall be re-submitted for approval to the Local Government. [*Cf.* Ben. Act III of 1885, s. 48.]

CHAPTER VI.

Audit.

Keeping of Accounts.

40. Accounts of receipts and expenditure of every Board shall be kept in the prescribed manner and form up to the prescribed day in each year. [*Cf.* 38 and 39 Vict., c. 55, s. 245.]

Accounts to be audited annually.

41. The accounts of every Board shall be audited and examined at least once in every year by such auditor as may be appointed by the Local Government.

Accounts to be open to inspection.

42. A copy of the accounts of every Board, duly made up and balanced, shall be deposited in the office of the Board and be open at the prescribed hours to the inspection of all interested persons for fourteen clear days before the audit; and all such persons may take copies or extracts from the same without fee.

Notice of audit to be given.

43. (1) Before each audit the Board shall, after being informed by the auditor of the proposed date of audit, give at least fourteen days' notice of the time and place at which the audit will be made and of the deposit of its accounts as provided by section 42.

(2) Such notice shall be given by posting outside the office of the Board and in such other way as may be prescribed.

Documents to be produced before auditor.

44. (1) For the purpose of any audit the auditor may by order in writing require the production before him of all books, deeds, contracts, accounts, vouchers, receipts and other documents and papers which he may deem necessary and may require any person accountable for or having the custody or control of the same to appear before him at such audit and to make and sign a declaration as to their correctness or to answer any question or prepare and submit any statement relative thereto.

(2) It shall be the duty of the Board to comply with any requisition made by the auditor and to give all reasonable facilities to the auditor to inspect and audit the accounts of the Board.

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(Chapter VI.—Audit.—Clauses 45—49.)

Power of persons interested to make objection at audit.

45. Any person interested in the District Primary Education Fund may make an objection in writing to the accounts before the auditor.

Powers of auditor to certify sums due.

46. (*1*) The auditor shall disallow any item of expenditure which is contrary to law and shall give a written certificate that the sum so disallowed is due from the person making or authorising the illegal payment.

(*2*) If any person entrusted with the duty of accounting for the Board fails to bring any sum into account which ought to have been brought into account and by such default any deficiency or loss is caused to the Board, the auditor shall give a written certificate that the amount of such deficiency or loss is due from the person so defaulting.

Appeal from orders of auditor.

47. (*1*) (*a*) Any person who has made an objection under section 45, if such objection has been overruled by the auditor, and

(*b*) Any person from whom any sum has been certified by the auditor to be due under section 46.

may appeal to the Commissioner of the Division against the decision of the auditor within thirty days, and the Commissioner may in appeal give any decision which might have been given by the auditor, and such decision shall be final.

(*2*) The Commissioner may, in his discretion, order that sums certified to be due under section 46 or sub-section (*1*) of this section shall not be realised under section 48, and such order shall be final.

Recovery of sums certified due.

48. (*1*) Every sum certified to be due from any person by an auditor under section 46 or by the Commissioner of the Division under section 47 shall be paid by such person to the District Primary Education Fund within fourteen days after the making of the certificate unless, in the case of a certificate by an auditor, an appeal under section 47 is pending.

(*2*) If payment is not made in accordance with the provisions of sub-section (*1*)—

(*a*) in the case of default by a Government servant or member of the establishment of the Board the sum payable shall be recovered, subject to the prescribed conditions, by deduction from his salary bill, and

(*b*) in the case of default by any other person the auditor shall forward to the Collector a certificate under his signature specifying the sum payable, and the Collector, on receipt of such certificate, shall proceed to recover the sum as if it were a public demand under the Public Demands Recovery Act, 1913. Ben. Act III of 1913.

Report of auditor to whom to be submitted.

49. Within fourteen days after the completion of the audit the auditor shall report on the accounts audited and examined and shall forward such report to the Local Government through the Director of Public Instruction and shall forward a copy of such report to the President of the Board concerned, who shall lay it before the Board.

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(Chapter VII.—Powers and duties of Union Boards, Union Committees and Panchayats.—Chapter VIII. —Recognition of and grants to Primary Schools.—Clauses 50—54.)

CHAPTER VII.

Powers and duties of Union Boards, Union Committees and Panchayats.

Delegation of Board's powers to Union Boards, Union Committees and Panchayats.

50. Subject to the prescribed conditions, the Board may and shall, if so required by an order of the Local Government, delegate all or any of its powers of construction, repair, supervision and management of primary schools to Union Boards in areas in which the Bengal Village Self-Government Act, 1919, is in force, and elsewhere to Union Committees or Panchayats, and thereupon such Union Boards, Union Committees or Panchayats, shall, subject to its control, exercise such powers within the area under their authority. Ben. Act V of 1919.

Union Committees and Panchayats to be bodies corporate for purposes of Act.

51. For the purposes of this Act every Union Committee constituted under the Bengal Local Self-Government Act of 1885, and every Panchayat appointed under the Village Chaukidari Act, 1870, shall be a body corporate by the name of "the Union Committee of (name of Union)" or, "the Panchayat of (name of village)," as the case may be, and shall have perpetual succession and a common seal, and shall by the said name sue and be sued, with power to acquire and hold property, both movable and immovable, and subject to the prescribed conditions, to transfer any property held by it and to contract and to do all other things necessary for the purposes of this Act. [*Cf.* Ben. Act V of 1919, s. 18.] Ben. Act III of 1885. Ben. Act VI of 1870.

Power of Union Board to transfer property and contract.

52. Notwithstanding anything contained in section 18 of the Bengal Village Self-Government Act, 1919, the power of every Union Board to transfer property or to contract shall, for the purposes of this Act, be subject to the prescribed conditions.

CHAPTER VIII.

Recognition of and grants to Primary Schools.

Recognition.

53. (*1*) If the managing authority of any school desires that such school shall be recognised as a primary school under this Act, it shall submit an application in the prescribed form to the Board. [*Cf.* Mad. Act VIII of 1920, s. 4.]

(*2*) The Board may, subject to the prescribed conditions, by an order in writing, grant such application, conditionally or unconditionally, or refuse or defer the grant of recognition and may also similarly withdraw recognition so granted.

(*3*) An appeal shall lie in respect of any order passed under sub-section (*2*) to the Director of Public Instruction or to any officer subordinate to him, being above the rank of District Inspector of Schools, to whom he may delegate his powers in this behalf in writing.

(*4*) The Board may subject to the prescribed conditions, recognise any school in the district as a primary school although no application for recognition has been made by the managing authority of such school under sub-section (*1*).

Grants.

54. (*1*) If the managing authority of any primary school under private management desires that such school shall be granted aid, it shall submit an application in the prescribed form to the Board. [*Cf.* Mad. Act VIII of 1920, s. 42.]

(*2*) The Board may, subject to the prescribed conditions, by an order in writing, grant such application, conditionally or unconditionally, or refuse or defer the grant of aid.

(*3*) An appeal shall lie in respect of any order passed under sub-section (*2*) to the Director of Public Instruction or to any officer subordinate to him, being above the rank of District Inspector of Schools, to whom he may delegate his powers in this behalf in writing.

CHAPTER IX.

Compulsory Education.

Notification by Local Government.

55. If the Local Government, after consulting the Board concerned, is satisfied that there is adequate provision for primary education in any area for which a Union Board, Union Committee or Panchayat, has been constituted, it may, by notification, declare that primary education shall be compulsory within such area.

No fees to be charged.

56. No fee shall be charged by any primary school under public management in any area in which primary education has been declared compulsory under section 55. [*Cf.* Mad. Act VIII of 1920, s. 47.]

Exemptions.

57. At the instance of the Board the Local Government may, by notification, exempt from the operation of section 58, section 61 and section 62 any person or class of persons in any area in which primary education has been declared compulsory under section 55. [*Cf.* Mad. Act VIII of 1920, s. 48.]

Responsibility of guardians.

58. In any area in which primary education has been declared compulsory under section 55 the guardian of every child resident in such area shall, subject to the exceptions specified in section 59, cause such child to attend a primary school. [*Cf.* Mad. Act VIII of 1920, s. 49.]

Conditions exempting from attendance.

59. Attendance at a primary school shall not be compulsory on a child if— [*Cf.* Mad. Act VIII of 1920, s. 50.]

(*1*) there is no primary school within two miles or such less distance as may be specified by general or special order of the Board in this behalf from the residence of the child;

(*2*) the child is under eight years of age and there is no primary school within one mile from the residence of the child;

(*3*) the child is prevented from attending the school by sickness, infirmity or other cause declared by a resolution of the Union Board, Union Committee or Panchayat concerned to be a reasonable excuse for non-attendance;

(*4*) the child is receiving instruction in some other manner approved by the prescribed officer;

(*5*) the child has already received instruction in a primary school or otherwise to the satisfaction of the Board; or

(*6*) the Board has declared that, owing to agricultural operations, children residing in the area under the authority of any Union Board, Union Committee or Panchayat within the jurisdiction of the Board shall be exempt from attendance at a primary school for a period to be specified in the declaration.

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(Chapter IX.—Compulsory Education.—Chapter X.—Religious Instruction—Chapter XI.—Indemnity.—Chapter XII.—Rules.—Clauses 60—65.)

Attendance Committees.

60. The Union Board, Union Committee or Panchayat concerned shall be responsible for the enforcement of the provisions of section 58, section 61 and section 62 and, subject to the prescribed conditions, shall appoint one or more Attendance Committees for this purpose. [*Cf.* Mad. Act VIII of 1920, s. 51.]

Default by guardian.

61. (*1*) If an Attendance Committee is satisfied that a guardian has, without reasonable excuse and after receiving a written caution from the Attendance Committee, failed to comply with the provisions of section 58, it shall send a written complaint against the guardian to a Magistrate having jurisdiction. [*Cf.* Mad. Act VIII of 1920, s. 52 (1) and (2).]

(*2*) The Magistrate, if satisfied that the complaint is well-founded, shall direct the guardian to cause the child in respect of whom the complaint was preferred to attend a primary school regularly from a date to be specified in such direction.

Penalty for default.

62. (*1*) If an Attendance Committee is satisfied that a guardian has without reasonable excuse failed to comply with a direction issued to him under sub-section (*2*) of section 61, it shall sanction his prosecution, and on conviction by a Magistrate such guardian shall be liable to a fine which may extend to five rupees. [*Cf.* Mad. Act VIII of 1920, s. 52 (3) and (4).]

(*2*) Any person who has on two or more previous occasions been convicted of an offence under this section shall, on further conviction for such offence, be liable to a fine which may extend to fifty rupees.

CHAPTER X.

Religious Instruction.

Religious instruction.

63. Subject to the prescribed conditions, provision shall, so far as possible, be made in every primary school for the religious instruction at least once in every week during school hours of every child attending the school in the religion of the guardian of such child:

Provided that, at the request in writing of the guardian of any child, such child shall be exempted from such religious instruction.

CHAPTER XI.

Indemnity.

Indemnity.

64. No suit, prosecution or legal proceeding whatever shall lie against any person in respect of anything which is in good faith, done or intended to be done under this Act. [*Cf.* Ben. Act III of 1926, s. 9.]

CHAPTER XII.

Rules.

Power of Local Government to make rules.

65. (*1*) The Local Government may, after previous publication, make rules for carrying out the purposes of this Act.

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(*Chapter XII.—Rules.—Clause 65.*)

(*2*) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(*a*) the educational authority referred to in clause (*1*) of section 2;

(*b*) the age, limit referred to in clause (*3*) of section 2;

(*c*) the subjects and standards referred to in clause (*14*) of section 2, and the circumstances in which such subjects may vary in different schools;

(*d*) the resignation of members, the circumstances in which and the authority by which any member of the Committee may be removed; [*Cf.* Act XIV of 1929, s. 15.]

(*e*) the filling of any vacancy in the Committee whether temporary or otherwise;

(*f*) the regulation of travelling allowances of members of the Committee and of their remuneration, if any;

(*g*) the appointment of the staff of officers and servants of the Committee and the Board and the pay and allowances of such staff;

(*h*) the appointment of a President of the Committee and the method of conducting the business of the Committee;

(*i*) the manner of election of members of the Committee under section 4 and the manner of election of members of the Board under clauses (*f*), (*g*) and (*i*) of section 6;

(*j*) the manner of election of the President of the Board under sub-section (*1*) of section 8;

(*k*) the amount and manner of payment of travelling allowances under section 13;

(*l*) the conditions subject to which the Board under section 14, the Union Committee and the Panchayat under section 51 and the Union Board under section 52 may transfer property held by them and may contract;

(*m*) the number of meetings to be held by the Committee and the Board, the number of members who constitute a *quorum* thereat, the keeping of minutes of the proceedings thereof, the submission of copies of such proceedings of the Committee to the Local Government and of the Board to the Commissioner of the Division, and the preparation and custody of registers and records by such Committee or Board;

(*n*) the manner of preparing schemes under clause (*c*) of sub-section (*1*) of section 23;

(*o*) the manner of opening additional primary schools and of the expansion of existing primary schools referred to in clause (*d*) of sub-section (*1*) of section 23;

(*p*) the conditions referred to in clause (*g*) of sub-section (*1*) of section 23;

(*q*) the manner of making grants under clause (*i*) of sub-section (*1*) of section 23;

(*r*) the conditions relating to pensions, gratuities and provident or annuity funds referred to in clause (*n*) of sub-section (*1*) of section 23 and in clause *Fifthly* of section 37;

(*s*) the reports and statements referred to in section 25;

(*t*) the conditions of appointment, punishment or dismissal of the staff of the Board under section 26;

(*u*) the percentage of cost of establishments referred to in clause *Secondly* of section 37;

(*v*) the percentage of cost of audit referred to in clause *Fourthly* of section 37;

(*w*) the bank or Government treasury referred to in sub-section (*1*) of section 38;

(*x*) the manner of reappropriation referred to in sub-clause (*ii*) of clause (*b*) of sub-section (*3*) of section 38;

(*y*) the form of budget prepared by the Board under section 39;

(*z*) the manner and form of accounting and the day up to which accounts shall be kept under section 40;

(*z1*) the hours for inspection of accounts referred to in section 42;

(*z2*) the procedure of auditors and all matters incidental and ancillary to the audit of accounts;

(*z3*) the manner of giving notice under sub-section (*2*) of section 43;

(*z4*) the conditions of recovery of sums under clause (*a*) of sub-section (*2*) of section 48;

(*z5*) the conditions of the delegation of powers by the Board to Union Boards, Union Committees and Panchayats under section 50;

(*z6*) the form of application for, and the conditions of grant of, and withdrawal of, recognition under section 53;

(*z7*) the form of application for, and the conditions of grant of, aid under section 54;

(*z8*) the officer referred to in clause (*4*) of section 59;

(*z9*) the conditions of appointment of an Attendance Committee under section 60; and

(*z10*) the conditions of provision for religious instruction under section 63.

CHAPTER XIII.

Repeals and Amendments.

Repeals and amendments of certain enactments.

66. The enactments specified in the Schedule shall be repealed or amended to the extent and in the manner mentioned in the fourth column thereof.

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(The Schedule.—Enactments repealed or amended.)

THE SCHEDULE.

Enactments repealed or amended.

(*See* Section 66.)

Year.	No.	Short Title.	Extent of repeal or amendment.
1	2	3	4
1885	III	The Bengal Local Self-Government Act of 1885.	1. In section 62 the words "primary and" shall be omitted. 2. In clause (*a*) of section 63 after the words "class of schools" the words "except primary schools recognised under section 53 of the Bengal (Rural) Primary Education Act, 1929," shall be inserted. 3. In clause (*a*) of section 65 after the words "class of schools" the words "except primary schools recognised under section 53 of the Bengal (Rural) Primary Education Act, 1929," shall be inserted. 4. Section 112 shall be repealed. 5. In clause (*q*) of section 138 the words "primary schools and" shall be omitted, and for the words and figures "sections 112 and 113" the word and figures "section 113" shall be substituted.
1919	IV	The Bengal Primary Education Act, 1919.	The proviso to sub-section (*2*) of section 1 shall be repealed.
1919	V	The Bengal Village Self-Government Act, 1919.	1. In section 32 the words "primary school or" and "primary schools or" where they occur shall be omitted. 2. After section 32 the following shall be inserted, namely :— "32A. Subject to the provisions of the Bengal (Rural) Primary Education Act, 1929 and to the control of the District School Board constituted under that Act, the Union Board may establish primary schools or assume charge of existing primary schools and shall repair, maintain and manage any primary school under its charge." Establishment and management of primary schools. 3. In clause (*j*) of sub-section (*2*) of section 101 the words "schools and" shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

It is universally admitted that there is urgent necessity for a great improvement in the condition of primary education in Bengal. The present system makes but little impression on the illiteracy of the province. The meagre resources that are now available are inadequately organised; small schools springing up here and there have a fitful existence for a few years; children attend irregularly and usually leave school before any real progress towards literacy has been made. The teachers are so poorly paid that the profession fails to attract persons with the requisite qualifications.

2. To remedy this state of affairs some attempts have already been made. A Primary Education Act, of which the author was Mr. Surendra Nath Ray of Behala, was passed in 1919, but it has had little practical effect, because the provision of funds was left to the option of local bodies. Similarly, the scheme prepared by Mr. Biss under which Government undertakes to pay half the cost—both capital and recurring—of primary education in any town or union has made little headway, because local bodies have proved reluctant to find even half the necessary funds. In the light of this experience it is clear that something much more drastic must be tried. Taxation cannot be left to the option of individual local authorities; it must be compulsory, if progress in this vital work is to be accelerated.

3. The present Bill is based in the first instance on the Madras Elementary Education Act, 1920 (Madras Act VIII of 1920), but differs from that statute in many important features. Its operation is confined to the rural districts of Bengal because systems of taxation and control in rural areas must differ from those in urban areas administered by Municipalities. It is proposed to deal separately with the Primary Education problem in urban areas.

A Rural Primary Education Bill was introduced in the last Legislative Council and was examined in Select Committee. The Select Committee presented a report and proposed a number of amendments to the Bill as introduced. The present Bill follows substantially the recommendations of that Committee.

4. The main objects of the Bill are—

(1) to provide an authority for each district to control primary education,

(2) to raise the funds necessary for the gradual establishment of universal primary education, and

(3) to provide for compulsory attendance at school.

5. The proposal of the Select Committee that there should be a Central Primary Education Committee to advise Government has been accepted. The Bill provides for such a Committee and requires the Local Government to consult this Committee before taking action under certain clauses in the Bill.

6. Chapter III creates in each district a controlling body, viz., the District School Board. The constitution of the Board follows closely the lines recommended by the Select Committee. The District Magistrate will be a member of the Board for the first eight years in order to ensure that the administrative experience of this officer and his subordinates will be available to the Board during the difficult period of the initiation of the scheme.

7. In order to secure for the expansion of primary education the largest possible funds, the recommendation of the Select Committee has been accepted that the whole of the expenditure required on account of the training of teachers shall be met from provincial revenues and not from the resources provided by the new taxation or from the normal grants which are now being made for primary education and which will be continued when the Act comes into force. It is intended also that the whole of the cost of the inspecting staff shall be met from provincial revenues and not from the District Primary Education Funds.

8. Power has been taken to bring the Act into force by gradual stages in the different districts. This is rendered necessary by the fact that certain preliminary work must be done. The first duties of District School Boards will be to survey the existing state of affairs and to determine where schools are to be sited, constructed or enlarged so that the children of each district can be provided in the most economical and efficient manner with adequate educational facilities. Training schools for teachers must be expanded so as to provide an increased supply of trained teachers. It may not be necessary to impose the cess immediately upon the introduction of the Act, because time will be required to prepare schemes and train teachers even before the work of enlarging existing schools and constructing others is undertaken.

9. The greatest difficulty in connection with the advance of primary education in this province has been the want of money. The Bill proposes to provide this by the levy of a Primary Education Cess similar to the Roads and Public Works Cesses. The yield of the cess is estimated at about one crore of rupees per annum the whole of which will be earmarked for primary education. The Bill proposes a cess of five pice in the rupee, of which the cultivator will pay four pice and the landlord one pice. As this cess does not touch those whose income is derived from trade, business or profession, a special section empowers each District Magistrate to assess a tax upon persons whose incomes are derived from sources other than the cultivation of land.

10. Chapter VI makes provision for an annual audit of the accounts of the District School Boards, and gives the auditor powers of disallowance and surcharge. The provisions of this Chapter are based upon the English Public Health Act of 1875, and embody the recommendations made by the Select Committee.

Compulsory education is dealt with in Chapter IX which provides for the compulsory attendance at a primary school of the children except those that are exempted for well-defined reasons. In response to a widely expressed public demand, provision has been made in Chapter X for the possibility of religious instruction during school hours.

The other features of the Bill are explained in the Notes on Clauses.

M. C. McALPIN,

Member-in-charge.

CALCUTTA;

The 8th July, 1929.

NOTES ON CLAUSES.

Clause 1 extends the Bill to the whole of Bengal outside municipal areas and gives power to the Local Government to bring it into force in whole or in part in such districts or parts of districts and on such dates as the Local Government may direct.

Clause 2 consists of necessary definitions of which the most important is that of "child" which includes both boys and girls.

Clause 3 provides for the appointment of the Central Primary Education Committee to advise the Local Government.

Clause 4.—The constitution specified in this clause provides for a non-official majority.

Clause 5.—By this clause the Local Government is required to consult the Central Primary Education Committee on various matters.

Clause 6.—By the constitution specified in this clause the non-official element will be in clear majority in the Board.

In order to correct possible under-representation of particular communities power is given to the Local Government to nominate for each district a number of members corresponding to the number of subdivisions in the district but in no case less than two. Provision is also made for the representation of teachers of primary schools.

Clause 7 gives the usual power to the Local Government to appoint members of the Board in default of election.

Clause 8 provides for an appointed President in the first instance and thereafter for one elected by the members of the Board.

Clause 10.—The first sub-clause prescribes how a member may resign and when the resignation shall take effect. The second states the term of office and the third provides for the continuance of the old members in office till the new ones have been actually appointed or elected.

Clause 11. *Sub-clause (1)* gives the Government the usual power to remove members from the Board in certain circumstances while *sub-clause (2)* gives power to the Government to fix a period during which a person so removed shall not be eligible for re-appointment or re-election.

Clause 12 contains the usual provisions for providing for vacancies in the Board that may arise.

Clause 13 provides for the payment of travelling allowances to certain members of the Board and its establishment. As the majority of the members will come from villages in the interior it is essential that they should be given every facility for attending.

Clause 14.—The incorporation of a Board is necessary in order to carry out the purposes of the proposed Act.

Clause 15 empowers the President or the Vice-President to preside at the meetings, or in their absence, gives the members power to elect one of themselves to preside.

Clause 16 makes the meetings of the Board open to the public. This is intended to attract public interest in these meetings.

Clause 17 contains the usual provision that members shall not vote on matters in which they have a personal or pecuniary interest.

Clause 18 gives power to the President to carry on the executive work of the Board and provides for the delegation of his duties to the Vice-President. Provision has been made in *sub-clause (4)* for the exercise by the Vice-President of all the functions of the President when the latter's office is vacant.

Clause 19 gives power to the Board to make their own regulations for the ordinary conduct of business at meetings. This clause should be read with clause 65 *(2) (l)*. The more important matters are provided in the latter clause and the rules framed thereunder must be made by Government. In the less important matters the Board is left to make its own regulations. *Sub-clause (2)* makes it clear that none of the regulations under this clause can override the rules framed by Government.

Clause 20 gives to the Commissioner of a Division power similar to that which he has with regard to municipalities to prevent any action by the Board in excess of powers conferred by law.

Clause 21 empowers the Government to order the Board to perform its duty in case of default; and if necessary to appoint a person to carry out such duty if the Board neglects to carry out the order of the Government.

Clause 22 gives the Government power, if the Board is not performing its duties under the Act, to bring into being a new Board. *Sub-clause (2)* provides for the interregnum between the supersession of the Board and the filling of the vacancies as a result of fresh nominations or elections.

Clause 23 lays down the duties of the District School Board in the matter of providing for the extension of primary education throughout the district, and in the control thereof either directly or through the agencies of Union Boards and

Panchayats. *Sub-clause* (*1*) (*n*) makes provision for pensions and a provident fund for the establishment of the Board and teachers in primary schools.

Clauses 24 and 25 are intended to keep the Government in touch with the progress made in each district.

Clause 26 provides for the appointment of the necessary staff and its control by the District School Board.

Clause 27.—This clause is based on section 14 of the Bengal Agricultural and Sanitary Improvement Act, 1920, and extends to the District School Board facilities for the compulsory acquisition of land.

Clause 28.—This clause is intended to vest in the District School Boards all property connected with primary schools now in the hands of District Boards.

Clause 29.—This follows the Bengal Cess Act very closely and the rate of cess prescribed will yield, roughly, one crore of rupees a year.

Clause 30.—This clause is intended to simplify the procedure of the realization of the primary education cess which will be paid automatically along with the road and public works cesses.

Sub-clause (*2*).—As in the case of the existing cesses the zamindars will pay the entire amount of the cess less the deduction of one pice for every rupee of the revenue.

Sub-clauses (*3*) and (*4*) provide for payments by the intermediate tenure-holders and the cultivating raiyat.

The cess has been distributed between various parties on two principles: (*i*) on the benefit received and (*ii*) on the ability to pay. Admittedly, practically the whole benefit will be received by the cultivators of Bengal, while, generally speaking, the cess will press less heavily on them than on the tenure-holders or zamindars. The amount of deduction to which the zamindars and tenure-holders are entitled is based on the portion of the total cess paid by them.

Clause 31 prescribes the procedure for the first imposition of the cess.

Clause 32.—This is a general clause bringing the administration of the new cess within the provisions of the existing Cess Act, 1880.

Clause 33.—The provisions of this clause, read with those of clause 38, ensure that the money collected will not be diverted to any purpose other than that of primary education.

Clause 34.—As the Cess Act, 1880, only affects the owners or occupiers of real property, it was necessary to bring in some provision to ensure that those whose incomes were derived from trade, business or profession, should not be exempted. For this purpose a summary procedure is proposed, based on the Chaukidari and Union Board assessment. No appeal is allowed from the assessment of the district magistrate but the amount of tax is limited under this clause to Rs. 100 per annum. The amount of tax so assessed shall be communicated to the Union Board or Panchayat for realization just as a precept is sent to the parish council in England by one of the superior authorities.

Sub-clause (*4*) empowers the Union Boards or Panchayats to recover arrears as in the case of the existing rates. *Sub-clause* (*5*) should stimulate collections as it allows 10 per cent. of the amount realized to be retained by the local bodies, while *sub-clause* (*6*) provides that the money will be safely lodged with the Primary Education Fund of the district.

Clause 36 enumerates the various sources of income which may be credited to the District Primary Education Fund including the various Government grants, the proceeds of the primary education cess, and the tax imposed under clause 34 and all other sums that may be credited to this Fund under the provisions of this Bill.

Clause 37 states the objects on which the Fund may be spent. By putting in the forefront the payment of interest upon loans raised for the purposes of the Act, the Board should be able to raise loans when necessary at a very low rate of interest.

The next two payments are connected with the collection of the cess.

Clause fourthly provides for the payment of cost of audit by the Board.

Clause fifthly provides for the Board's establishment and the provident fund contributions for all the employees whether clerks or teachers.

Clause sixthly allows for the payment of travelling allowances to the members of the Board and its establishment which will be essential if the local representatives are to take a real part in the working of the Board.

All the above items are for comparatively small sums of money, while the main expenditure will be incurred under clause *seventhly* for the cost of construction, equipment and maintenance of primary schools.

Clause 38.—This clause provides safeguards against the misapplication of the money by ensuring that all sums are promptly credited to the Fund and that payments can be made only on a regular procedure.

Clause 39.—This clause provides for a regular budget being submitted every year so that the Government can see that no Board is misapplying its finances.

Clause 40.—This clause and the succeeding clauses up to 49 follow the provisions of the English Public Health Act of 1875 and have been inserted to ensure that the Primary Education Fund can be diverted from its real object only at considerable personal risk of the person responsible for that diversion—whether he be a Government servant or not.

This clause will enable the accounts of each Board being kept in a uniform manner and in consonance with the general finances of the province.

Clause 41 provides for an annual audit.

Clause 42.—To render the audit effective, it is essential that the accounts should be open to the inspection of the public so that any matters about which there are doubts or suspicions can be brought before the auditor.

Clause 43 contains another provision to ensure the publicity of the audit.

Clause 44.—Sub-clause (1) enables the auditor to call for any document that may be necessary, and gives him power to make his inquiries into the questions that may arise during the audit effective. In *sub-clause (2)* the duty of the Board to assist the auditor is specifically laid down.

Clause 45 will enable any person to bring an objection about the accounts before the auditor.

Clause 46.—Under this clause the auditor shall not only decide whether any money has been properly spent or not, but, if it has been wrongfully spent, he will go a step further and ascertain who is to blame and for what sum he is liable in connection with this action. Under *sub-clause (2)* the auditor is given similar powers with regard to those who have caused loss to the Board by failing to credit any sums that are due to the Primary Education Fund.

Clause 47.—Against the orders of the auditor one appeal will lie and that to the Commissioner of the Division. As this officer knows the circumstances of the district better than any other, he seems to be a suitable person to decide such appeal. Under *sub-clause (2)* a discretionary power is given to him of condoning offences. In England such power is vested in the Ministry of Health and is very widely exercised in cases where genuine mistakes have arisen and there has been no deliberate dishonesty or gross negligence. Especially on the introduction of the Act when people are still strange to the new procedure and rules for expenditure, it is necessary that the Commissioner of the Division should have wide powers of making allowances for inexperience, etc.

Clause 48.—Under this clause the procedure has been given for the payment of sums certified by the auditor to be due to the District Primary Education Fund, while *sub-clause (2)* provides for a speedy remedy against all persons who make default of payment.

Clause 49 makes certain that no delay will occur in bringing the results of the audit to the notice of both the Government and the District School Board.

Clause 50 gives power to the District School Board to delegate its powers to Union Boards, Union Committees and Panchayats as their agents for carrying on the work in connection with Primary Education within the area under their control. As the Union Boards, Union Committees and Panchayats vary very greatly in quality, it is clear that such discretion must be left with the central authority in each district. By this means also the funds are concentrated and accounts simplified. Such delegation will doubtless be used as far as possible but it is essential, especially at the start of this scheme, to keep control over procedure within the district as simple and concentrated as possible.

Clause 51.—The incorporation of an Union Committee and a Panchayat is necessary under the proposed Act for the purpose of carrying out its functions.

Clause 52 will enable Union Boards to transfer property or contract under certain prescribed conditions.

Clause 53.—This clause enables any school to apply for recognition as a primary school under the Act and empowers schools to appeal to a higher authority if they are dissatisfied with the decisions of the Board.

Sub-clause (4) will enable the Board to recognise at once without waiting for applications all the satisfactory existing primary schools.

Clause 54 makes provision for primary schools, under private arrangement, to obtain grants-in-aid which will enable them to develop their work on their own individual lines.

Clause 55.—Before declaring primary education compulsory within an area, Government must be satisfied that there are schools and teachers sufficient for all the children in the area concerned and must consult the local authority in the area.

Clause 56.—Fees cannot be levied upon children who are compelled by law to attend school and this clause merely enforces that principle.

Clause 57.—Under this clause Government is given the power of exempting persons or classes of persons from the compulsion of sending their children to school. Presumably girls might be exempted at first, while boys would have to attend.

Clause 58.—This lays the duty on the guardian of sending his child to school.

Clause 59 enumerates the cases in which a guardian may be reasonably exempted from taking action under clause 58.

Of these exemptions especial notice should be taken of *sub-clause* (*6*). As the children are very largely employed during the special periods of agricultural operations and as such periods vary not only from district to district but within the district, it is necessary to empower the Board to grant exemptions so that all, if necessary, may help their families at this important time.

Clause 60.—This clause puts the responsibility of enforcing attendance on the Union Boards, Union Committees or Panchayats concerned.

Clause 61 prescribes the procedure by which the Attendance Committee can bring cases of default on the part of guardians to the notice of the magistrate. Under *sub-clause* (*2*) of this clause the magistrate can direct the attendance of a child at school if he is satisfied that the complaint is well founded.

Clause 62.—This clause takes us a step further when if the action taken both by the Attendance Committee and by the magistrate has failed to force the guardian to present his child at the school, the magistrate can convict the guardian and sentence him.

Clause 63.—In this form and safeguarded by the proviso, it is hoped to provide religious instructions in schools for young children without emphasising religious differences.

Clause 64 contains the usual provision about indemnity.

Clause 65 is the usual clause collecting in one place the various provisions relating to the rule-making powers.

Clause 66 and the Schedule contain the consequential amendments necessary in other enactments.

J. BARTLEY,

Secy. to the Govt. of Bengal,

Legislative Department.

The Calcutta Gazette

THURSDAY, AUGUST 22, 1929.

Part IV

Bills introduced in the Bengal Legislative Council, Reports of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2358L., dated Calcutta, the 14th August, 1929.—In pursuance of the provision of rule 20 of the Bengal Legislative Council Rules, 1920, the following Bill introduced in the Bengal Legislative Council on the 7th August, 1929, is hereby published for general information, together with the Statement of Objects and Reasons annexed thereto:—

THE CALCUTTA UNIVERSITY BILL, 1929.

A

BILL

to amend the law relating to the University of Calcutta.

WHEREAS it is expedient to amend the law relating to the Calcutta University; It is hereby enacted as follows:

1. (*1*) This Act may be called the Calcutta University Act, 1929.

(*2*) It extends to the whole of Bengal.

(*3*) It shall come into force on the first day of March, 1929.

2. The Indian Universities Act, 1904, hereinafter referred to as the said Act, shall, in its application to Bengal, be amended in the manner hereinafter provided.

3. To section 4, sub-section (*1*), clause (*d*), the following shall be added after sub-clause (*iii*), namely:—

"and in the case of the University of Calcutta,

(*iv*) elected by the Professors and Lecturers in Colleges affiliated to the University;

(*v*) elected by the Professors and Lecturers appointed and paid by the University;

(*vi*) elected by the graduate teachers in schools recognised by the University;

(*vii*) elected by the members of the Bengal Legislative Council; and

(*viii*) elected by the members of the Municipalities and District Boards in the Presidency of Bengal."

4. In section 4, sub-section (*4*) of the said Act, after the word "either" and before the word "class," the following words shall be inserted, namely:—"(or any)."

5. To section 5, after sub-section (*2*) Proviso of the said Act, the following words shall be added, namely:—This sub-section and Proviso shall not apply in the case of the University of Calcutta.

6. In section 6, sub-section (*1*), after the words "of such number," the following words shall be inserted, namely:—"except in the case of the University of Calcutta."

7. To section 6, sub-section (*1*), of the said Act, the following shall be added, namely:—

"(*1A*) In the case of the University of Calcutta, of such number (not exceeding one hundred)—

(*a*) twenty-five shall be elected by registered graduates;

(*b*) fifteen shall be elected by the Faculties;

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(*Sections 8—14.*)

(*c*) fifteen shall be elected by the Professors and Lecturers in Colleges affiliated to the University, of whom not less than five shall be Principals of such Colleges;

(*d*) ten shall be elected by the Professors and Lecturers appointed and paid by the University:

(*e*) five shall be elected by the graduate teachers in schools recognised by the University;

(*f*) four shall be elected by the non-official members of the Bengal Legislative Council;

(*g*) one shall be elected by the Aldermen and elected Councillors of the Corporation of Calcutta, and five shall be elected by the elected members of the Municipalities and District Boards in the Presidency, Burdwan, Dacca, Rajshahi and Chittagong Divisions of Bengal;

(*h*) and the remainder shall be nominated by the Chancellor."

8. In section 7, sub-section (*2*), clause (*b*) of the said Act, for the words "such amount as may be prescribed by the regulations," the words "two rupees" shall be substituted.

9. In section 7, sub-section (*2*), clause (*b*) Proviso of the said Act, for the words "and of such further sum as may be prescribed by the regulations," the words "and of the further payment of two rupees" shall be substituted.

10. In section 7, sub-section (*3*), of the said Act, for the words "of such amount as may be prescribed by the regulations," the words "two rupees" shall be substituted.

11. In section 7, sub-section (*3*), Proviso of the said Act for the words "prescribed in this behalf by the regulations" the words "of fifty rupees" shall be substituted.

12. After section 9 and before section 10 of the said Act, the following shall be inserted:

"*9A*. In the case of the University of Calcutta, the election of Ordinary Fellows by the constituencies mentioned in 7 (*1A*) (*c*), 7 (*1A*) (*d*), 7 (*1A*) (*e*), 7 (*1A*) (*f*), and 7 (*1A*) (*g*) shall be held in accordance with regulations to be framed in this behalf."

13. In the First Schedule to the said Act, under the sub-head University of Calcutta, for the words "The member of the Executive Council.....Department of Education," the following words shall be substituted, namely:—"The Ministers appointed by the Governor to be in charge of the Transferred Departments."

14. To the First Schedule to the said Act, under the sub-head University of Calcutta, after the words "The Principal, Presidency College," the following shall be substituted, namely:—

The Principal, Scottish Churches College, Calcutta.

The Principal, St. Xavier's College, Calcutta.

The Principal, Vidyasagar College, Calcutta.

The Principal, City College, Calcutta.

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(Section 14.)

The Principal, Ripon College, Calcutta.
The Principal, Bangabasi College, Calcutta.
The Principal, Asutosh College, Calcutta.
The Principal, Sanskrit College, Calcutta.
The Principal, Islamia College, Calcutta.
The Principal, St. Paul's College, Calcutta.
The Principal, University Law College, Calcutta.
The Principal, Medical College, Calcutta.
The Principal, Carmichael Medical College, Calcutta.
The Principal, Bengal Engineering College.
The Principal, Hughli College.
The Principal, Serampore College.
The Principal, Wesleyan Mission College, Bankura.
The Principal, Krishnath College, Berhampore.
The Principal, Rajshahi College.
The Principal, Chittagong College.
The Principal, Anandamohan College, Mymensingh.
The President, Council of Post-graduate Teaching in Arts, Calcutta University.
The President, Council of Post-graduate Teaching in Science, Calcutta University.
The member of the Bengal Legislative Council representing the Calcutta University Constituency.

STATEMENT OF OBJECTS AND REASONS.

The present constitution of the Calcutta University is based mainly on Act VIII of 1904. This measure evoked a great deal of opposition at the time of its enactment. Since then, considerable progress has been achieved in all the branches of educational activity. The conditions in this province have also undergone change in various respects. It is now felt that the Indian Universities Act of 1904 is wholly unsuited to the needs of the present day. Evidence of this is furnished by the fact that it has been found necessary to amend the law relating to Universities in several of the provinces. It can hardly be denied that the existing constitution of the Senate of the University is not representative. The law provides for eighty per cent. of its members being nominated by the Chancellor. Only ten per cent. of the total strength of the Senate is elected by the registered graduates. Even this limited right is, on account of the high fee payable for registration, availed of by a small proportion of the educated community. There is no scope for the adequate representation of the general public interested in education or of teachers in non-Government colleges and schools. This Bill seeks to remedy these defects. It also attempts to provide a constitution for the University which is calculated to enable this body to perform its functions independently of outside control and promote the best interests of the people of the province.

PRAMATHANATH BANERJEA,
Member-in-charge.

CALCUTTA:
The 17th July, 1929.

J. BARTLEY,
Secy. to the Bengal Legis. Council.

The Calcutta Gazette

THURSDAY, AUGUST 29, 1929.

Part IV

Bills introduced in the Bengal Legislative Council, Reports of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2416L.—21st August, 1929.—In pursuance of the provision of rule 20 of the Bengal Legislative Council Rules, 1920, the following Bill, which was introduced in the Bengal Legislative Council on the 7th August, 1929, and in regard to which a motion was carried at the same meeting of the Council that the Bill be circulated for the purpose of eliciting opinion thereon, is hereby published for general information together with the Statement of Objects and Reasons annexed thereto. Expressions of opinions by persons interested in the Bill should be sent so as to reach the undersigned before the 1st November, 1929:—

THE CALCUTTA MUNICIPAL (AMENDMENT) BILL, 1929.

A

BILL

to amend the Calcutta Municipal Acts, 1923.

Preamble.

WHEREAS it is expedient to amend the Calcutta Municipal Acts, 1923, in the manner hereinafter appearing, so as to separate Wards Nos. 30, 31 and 32, *i.e.*, the Cossipur-Chitpur area, and Ward No. 26, *i.e.*, the Garden Reach area, from the limits of the Corporation of Calcutta, and to reconstitute Wards Nos. 30, 31 and 32 as the Cossipur-Chitpur Municipality, and Ward No. 26 as the Garden Reach Municipality, as those two Municipalities existed before their amalgamation with the Corporation of Calcutta. III and XI of 1923.

It is hereby enacted as follows :—

Short title and commencement.

1. This Act may be called the Calcutta Municipal (Amendment) Act, 1929, and it shall come into force on the day it receives the assent of the Governor-General.

Definitions.

"Cossipur-Chitpur area."

"Garden Reach area."

"Reconstituted Municipalities."

2. For the purposes of this Act, unless there is anything repugnant in the subject or context, the expression "Cossipur-Chitpur area" means the area covered by the Cossipur-Chitpur Municipality, at the time of its amalgamation with Calcutta, and which has been formed into Wards Nos. 30, 31 and 32 of the Corporation of Calcutta since the said amalgamation; and the expression "Garden Reach area" means the area covered by the Garden Reach Municipality, at the time of its amalgamation with Calcutta and which has been formed into Ward No. 26 of the said Corporation since the said amalgamation, the expression "reconstituted Municipalities" means the Cossipur-Chitpur Municipality and the Garden Reach Municipality as reconstituted under this Act.

Explanation to the proviso to sec. 1 of Act III of 1923.

3. In the explanation to the proviso to section 1 of the Calcutta Municipal Act, 1923, the expression "area added to Calcutta" shall not be deemed to include the Cossipur-Chitpur and the Garden Reach areas. III of 1923.

Section 2 of Act III of 1923.

4. In section 2 of the Calcutta Municipal Act, 1923, the expression "area added to Calcutta" wherever it occurs, shall not be deemed to include the Cossipur-Chitpur and the Garden Reach areas, and the provisions of that section shall not apply to those areas. III of 1923.

Amendment of sec. 3(*1*) of Act III of 1923.

5. From section 3, sub-section (*1*) of the Calcutta Municipal Act, 1923, *omit* the figures and words "(*ii*) the Cossipur-Chitpur Municipality"; and "(*iii*) the Garden Reach Municipality"; and renumber the remaining clauses accordingly. III of 1923.

Section 3(*11*) of Act III of 1923.

6. In section 3, sub-section (*11*) of the Calcutta Municipal Act, 1923, the expression "area added to Calcutta" shall not be deemed to include the Cossipur-Chitpur and the Garden Reach areas, and Schedule I mentioned in that sub-section shall mean that schedule as substituted by section 13 of this Act. III of 1923.

Amendment of sec. 5 of Act III of 1923.

7. In section 5, clause (*a*) of the Calcutta Municipal Act, 1923, *substitute* the word "sixty-five" for the word "seventy-five." III of 1923.

Amendment of sec. 6 of Act III of 1923.

8. From section 6 of the Calcutta Municipal Act, 1923, *omit* the words "Cossipur-Chitpur" and "Garden Reach" from both the places where they occur, and in the last but two lines in the said section, *omit* the word "or", and *substitute* the word "Municipality" for the word "Municipalities." III of 1923.

Amendment of sec. 7 of Act III of 1923.

9. From section 7 of the Calcutta Municipal Act, 1923, *omit* the words "or Cossipur-Chitpur or Garden Reach Municipalities" and in place thereof *put* the word "Municipality." III of 1923.

The Calcutta Municipal (Amendment) Bill, 1929.

(*Clauses 10—14*).

Amendment of sec. 21 of Act III of 1923.

10. From section 21, sub-section (*1*), clause (*l*) of the Calcutta Municipal Act, 1923, *omit* the words "or the Cossipur-Chitpur Municipality", and from the last line of sub-clause (*ii*) *omit* the word "and," and *omit* the whole of clause (*iii*). III of 1923.

Amendment of sec. 90 of Act III of 1923.

11. From the body of section 90 of the Calcutta Municipal Act, 1923, *omit* the last eight lines beginning with the words "a sum of not less than" and ending with the words "of this Act," and from the margin of that section *omit* the words "Cossipur-Chitpur, and Garden Reach Municipalities" and in place thereof *put* the word "Municipality." III of 1923.

Amendment of sec. 242 of Act III of 1923.

12. In section 242, sub-section (*1*), clause (*a*) of the Calcutta Municipal Act, 1923, *insert* the words "Cossipur-Chitpur" and "Garden-Reach" after the word "Baranagar." III of 1923.

Amendment of sch. I of Act III of 1923.

13. In Schedule I of the Calcutta Municipal Act, 1923, under Boundaries of Calcutta *substitute* the following in place of the boundaries given therein :— III of 1923.

" Boundaries.

"A line drawn along the southern and western bank of the Circular Canal from the river Hooghly to the point where it meets the New Canal ; thence eastward along the southern bank of the New Canal to the point where it meets the Beliaghata Canal ; thence westward along the southern bank of the Beliaghata Canal to the point where it meets Pagladanga Road ; thence along the northern and eastern edge of Pagladanga Road to the point where it meets Chingrighatta Road ; thence along southern edge of Chingrighatta Road to the point where it meets Tangra Road, South, to the point where it meets Topsia Road, North ; thence along the eastern and southern edge of Topsia Road, North, to the point where it meets Hughes Road ; thence along the eastern edge of Hughes Road to the point where the Town and Suburban High Level Sewers meet ; thence along the southern edge of the new road to the point where it meets Topsia Road, South ; thence along southern edge of Topsia Road, South ; thence along the southern edge of Topsia Road, South, to the point where it meets Tiljala Masjidbari Lane ; thence along the eastern and southern edge of Tiljala Masjidbari Lane to Tiljala Road, formerly known as Maulavi Ahmad Khan Bahadur's Road ; thence westward along a line drawn in continuation of the southern edge of Tiljala Masjidbari Lane to the Eastern Bengal Railway line ; thence southward along the western edge of the line of that Railway, and westward along the northern edge of the Budge-Budge Branch of that Railway to Russa Road, South ; thence southward along the eastern edge of Russa Road, South, to the point where it meets Tollyganj Circular Road ; thence along the southern boundary of Tollyganj Circular Road to the point where it meets the southern boundary of the Port Commissioners' land acquired for the purpose of constructing King George's Dock and its connected works, and thence along the southern boundary of the Port Commissioners' land above referred to, as it stands at the commencement of this Act, up to the point where it meets Diamond Harbour Road ; thence along the southern boundary of Shahapur Road and its continuation, the Garagacha Road, to the southern edge of the line of old Taratala Road ; thence northward along the western edge of the line of old Taratala Road, and a line drawn in continuation thereof, up to the river Hooghly and thence along the left bank of the river Hooghly to its junction with the Circular Canal."

Amendment of Sch. III of Act III of 1923.

14. From Schedule III of the Calcutta Municipal Act, 1923, *omit* the words "Garden-Reach," "Belgachia," "Satpukur" and "Cossipur" from column 1 and also *omit* the words and figures against the said four words in columns 2, 3 and 4. III of 1923.

The Calcutta Municipal (Amendment) Bill, 1929.

(Clauses 15—20).

Amendment of Sch. IV of Act III of 1923.

15. From Schedule IV of the Calcutta Municipal Act, 1923, III of 1923. *omit* the words "Garden-Reach," "Belgachia," "Satpukur" and "Cossipur" from column 1 and also *omit* the words and figures against the said four words in columns 2 and 3, both under "A.—Non-Muhammadan Constituencies" and "B.—Muhammadan Constituencies."

Amendment of Sch. VII of Act III of 1923.

16. From Schedule VII of the Calcutta Municipal Act, 1923, *omit* the words "Garden Reach," "Belgachia," "Satpukur" and "Cossipur" from column 2, and also *omit* the figures and words against the said four words in columns 1, 3, 4, 5 and 6. III of 1923.

Amendment of sec. 6 of Act XI of 1923.

17. From section 6 of the Calcutta Municipal (No. II) Act, 1923, *omit* the words "Cossipur-Chitpur" and "Garden-Reach." III of 1923.

Amendment of sec. 7 of Act XI of 1923.

18. In section 7 of the Calcutta Municipal (No. II) Act, 1923, *substitute* the words "sub-clauses (*i*), (*iv*) and (*v*)" for the words "sub-clauses (*i*) to (*v*)", until the sub-clauses are renumbered according to section 5 of this Act. III of 1923.

Reconstitution of the Cossipur-Chitpur and the Garden Reach Municipalities.

19. The Cossipur-Chitpur area hereby separated from the limits of the Corporation of Calcutta is reconstituted a separate Municipality under the Bengal Municipal Act, 1884, and is hereby named the "Cossipur-Chitpur Municipality"; and the Garden Reach area hereby separated from the limits of the said Corporation is reconstituted a separate Municipality under the said Act, and is hereby named the "Garden Reach Municipality." III of 1923.

Formation of a Committee to give effect to this Act.

20. (*1*) Within two months from the date of the commencement of this Act, the Local Government shall appoint a Committee consisting of:—

(*a*) five Councillors of the Corporation of Calcutta from among those representing the Cossipur-Chitpur and Garden Reach areas on the said Corporation;

(*b*) four members elected by the Corporation of Calcutta from among the general body of Councillors and Aldermen, excluding those representing the Cossipur-Chitpur and Garden Reach areas on the said Corporation; and

(*c*) four members nominated by the Local Government, three of whom must be non-official members of the Bengal Legislative Council;

to report on all particulars and arrangements necessary for, and incidental to, the reconstitution of the Cossipur-Chitpur and Garden Reach areas into separate Municipalities, including the adjustment of accounts and the provision of initial working funds, and to submit their report to the local Government:

Provided that if the Corporation of Calcutta fails to elect its representatives on the said Committee as hereinbefore provided within the aforesaid time, then the local Government shall nominate them, according to sub-clauses (*a*) and (*b*) above, within fifteen days of the expiry of the said time.

(2) The local Government shall publish the names of the members of the said Committee in the *Calcutta Gazette*.

(3) The first meeting of the said Committee would be called by the Secretary to the Corporation of Calcutta within one week of the publication of the names of the members in the *Calcutta Gazette*.

(4) At the first meeting of the above Committee it will elect its own Chairman and Secretary.

(5) The procedure of the said Committee shall be in accordance with the rules made for the business of special Committee of the Corporation of Calcutta, so far as they are applicable.

The Calcutta Municipal (Amendment) Bill, 1929.

(*Clauses 21—25*).

(6) The meetings of the said Committee shall be held at such time and place as may be determined by it.

(7) The Corporation of Calcutta, and its officers shall upon request made by the said Committee, place all necessary and available information, materials, records and papers before it.

(8) The cost for the meetings and other matters incidental to the working of the said Committee shall be met by the Corporation of Calcutta.

(9) The death, resignation or absence of any one or more members of the said Committee, after it is formed, would not in any way affect the working of the Committee and the decision and report of the Committee would not be rendered void or voidable thereby.

(10) The Committee shall submit its report to the local Government within four months from the date of its first sitting and the said report shall be published in the *Calcutta Gazette* immediately thereafter and it shall have the finality and force of law and shall be binding upon all the parties and bodies concerned from the date of such publication:

Provided that if the said Committee be not unanimous in its report, in respect of any or all matters included therein, then only the report of the majority of the members shall have the finality and force of law and shall be binding upon all the parties concerned from the date of such publication.

Election of Commissioners for and commencement of the re-constituted Municipalities.

21. The election of Commissioners for the Cossipur-Chitpur and Garden Reach Municipalities hereby reconstituted shall take place, the working of the said Municipalities shall commence and the elected Councillors representing the Cossipur-Chitpur and Garden Reach areas on the Corporation of Calcutta shall cease to be such at such time and in such manner as the said Committee shall in its said report direct, and until such time the administration of the Corporation of Calcutta over the said areas shall continue.

Vesting of property rights and interests.

22. All rights and interests of whatsoever nature or kind in immovable property situated within or concerning the Cossipur-Chitpur and Garden Reach areas, which are now vested in or held in trust for, and all sums of money due at the commencement of the working of the said reconstituted Municipalities, whether on account of rates, tolls, taxes and fees or otherwise to, the Corporation of Calcutta, in respect of and concerning the said areas, shall be deemed to be vested in the Commissioners of the said two reconstituted Municipalities, respectively as the case may be.

Loans, etc., of the Corporation of Calcutta.

23. Any loans taken or engagements entered into by or on behalf of the Corporation of Calcutta whilst the Cossipur-Chitpur and the Garden Reach areas were under its administration shall not in any way affect the operation of this Act and the reconstitution of the aforesaid areas into separate Municipalities.

Cancellation and restoration of assessments.

24. The assessment to rates, taxes and fees made or proposed to be made by the Corporation of Calcutta in respect of the Cossipur-Chitpur and Garden Reach areas, under Part IV of the Calcutta Municipal Act, 1923, whilst those areas were under the administration of the said Corporation, so far as they relate to holdings which were entered in the assessment lists of the old Cossipur-Chitpur and Garden Reach Municipalities, at the time of their amalgamation with the said Corporation, will be cancelled, and the assessment subsisting in those areas at the date of their amalgamation with the said Corporation will be restored from such date and in such manner as the said Committee will direct in its said report. III of 1923.

Transfer of contractual and other rights.

25. Except as the local Government may otherwise by notification in the *Calcutta Gazette* direct all contracts, or agreements and leases entered into and given by the Corporation of Calcutta, in respect of and solely for the Cossipur-Chitpur and Garden Reach areas, whilst under the administration of the

The Calcutta Municipal (Amendment) Bill, 1929.

(Clauses 26—28).

said Corporation may, so far as they are outstanding at the date of the commencement of the working of the said two reconstituted Municipalities, be binding upon and against or enforced by and against the Commissioners of the said two Municipalities, respectively, as the case may be.

Refund of cash monies, etc., by the Corporation of Calcutta.

26. Such cash monies and Government Promissory Notes, as may be mentioned in the report of the said Committee, together with the furniture, old records, movable property and other assets, so far as they are available of the old Cossipur-Chitpur and Garden Reach Municipalities, which were handed over to and taken by the Corporation of Calcutta, when the the Calcutta Municipal Act, 1923, came into operation as well as the books and records prepared by the said Corporation in respect of and concerning the Cossipur-Chitpur and Garden Reach areas, whilst under the administration of the said Corporation, shall be refunded, returned and made over by the said Corporation to the Commissioners of the said two reconstituted Municipalities, respectively, as the case may be. III of 1923.

Operation of enactments, rules, by-laws, etc.

27. Except as the local Government may otherwise by notification in the *Calcutta Gazette* direct all enactments, rules, by-laws, regulations, orders, circulars, directions and powers which were operative in and were enjoyed by the Cossipur-Chitpur and the Garden Reach Municipalities at the date of their amalgamation with the Corporation of Calcutta, would be operative in and enjoyed by the said two reconstituted Municipalities, respectively, as the case may be.

Powers of Commissioners of the reconstituted Municipalities.

28. Notwithstanding anything to the contrary contained in the Calcutta Municipal Act, 1923, or the Bengal Municipal Act, 1884, or any other Act, it will be competent for the Commissioners of the said two recopstituted Municipalities to alter, modify, revise, cancel or give effect to, any act done or resolution passed or assessment made or proposed to be made by the Corporation of Calcutta, in respect of, or in any way concerning, the Cossipur-Chitpur and Garden Reach areas, whilst those areas were under the administration of the said Corporation. III of 1923. III of 1884.

STATEMENT OF OBJECTS AND REASONS.

The Calcutta Municipal Act, 1923, as it was originally framed, did not include in its local extent the Cossipur-Chitpur area, and the Bill even when it emerged from the Select Committee did not include that area. This area was amalgamated with Calcutta in the teeth of vehement opposition by the rate-payers and against the deliberate and considered recommendations and opinions to the contrary made and given by the Amalgamation Commission appointed by Government, the then District Magistrate of 24-Parganas, and the Commissioners of the old Cossipur-Chitpur Municipality. The motion for amalgamation was carried by a very narrow majority in the Bengal Legislative Council, even the Hon'ble Minister in charge of the Bill voting against the same. It was generally thought that the step of increasing the liabilities and obligations of the Corporation of Calcutta by adding to the already extensive city the aforesaid vast area of Cossipur-Chitpur, covering more than four square miles and comprising many mills, factories and business houses, was a menace to the health and population of the city. Even before the amalgamation of that area, the Corporation of Calcutta was not in a position to meet its statutory obligations as regards the city proper in a satisfactory way. And this has been much more the case after the amalgamation, as it was bound to be, both in respect of the city proper and the said added area ; and the position has been rendered worse on account of the financial difficulties of the Corporation. For this reason, many good schemes have either been abandoned or postponed, and there is very little hope of the said schemes being ever carried out if the aforesaid vast area is any longer kept within the limits of the Corporation of Calcutta. On the other hand, the people of the said added area, will not certainly for many years to come enjoy the amenities which are now being enjoyed by the residents of the city though the former have been called upon to pay rates and taxes many times more than their former assessment, ignoring the salutary provision made by the Legislature for levying a lower and progressive rate under section 7 of the Calcutta Municipal (No. II) Act, 1923, thus causing much dissatisfaction amongst the rate-payers of that area, notwithstanding the partial reduction of valuation of holdings made in some cases by the Chief Executive Officer in the exercise of his powers under section 146 of the Calcutta Municipal Act, 1923. Moreover, the administration by the Corporation of Calcutta is costlier than that by the old Municipality, which was commended in successive Government annual reports, and under which the people enjoyed many privileges and facilities of which they have now been deprived. In fact, there was no case made out for amalgamating the said area with Calcutta by abolishing a flourishing and popular Municipality which effected considerable improvements in every direction within the said area, and had a combined surface drainage and sewerage scheme and other important schemes ready for being taken up, though it derived a much lower income by taxation under the system provided for in the Bengal Municipal Act, 1884,

Most of the above reasons also apply to the case of the Garden Reach area, which comprises nearly 4½ square miles and is mostly undeveloped and consists extensively of jungles, ditches, tanks and paddy lands without lights, filtered water, roads or drains. Most of the inhabitants of this area are very poor and they can ill-afford to pay the exorbitant taxes imposed upon them by the Corporation of Calcutta, as a result of which their goods have been seized under distress warrants and many of them have been rendered homeless. Owing to their inability to pay taxes, almost all the inhabitants have been disenfranchised ; where there were nearly 600 Muhammadan electors before, there were less than 50 at the last General Election.

It will be remembered that a Bill with the same object as the present one was introduced by Dr. Suhrawardy and passed by the Legislative Council on the 18th August, 1926, but the same was not assented to by the then Governor of the Province. But in his letter to Dr. A. Suhrawardy His Excellency, observed : "It will be always open to the next Council, should they desire to do so, to consider at leisure a fresh Bill with the same object." The present Bill is introduced with necessary amendments, and it is hoped that the present Council will extend to it the same sympathy and support as was given by the Council to Dr. A Suhrawardy's Bill.

And it may also be mentioned that a similar Bill was introduced by Rai Harendra Nath Chaudhuri in the last Council on the 14th December, 1927, but the same lapsed owing to the fact that no opportunity was found to move the second reading thereof during the next two sessions.

SHAMSUDDIN AHMED,

Member-in-charge.

CALCUTTA ;

The 20th July, 1929.

J. BARTLEY,

Secy. to the Bengal Legislative Council.

The Calcutta Gazette

THURSDAY, OCTOBER 10, 1929.

Part IV

Bills introduced in the Bengal Legislative Council, Reports of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

LEGISLATIVE DEPARTMENT.

NOTIFICATION.

No. 833T.L., dated Darjeeling, the 3rd October 1929.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information:—

THE BENGAL TENANCY (AMENDMENT) BILL, 1929.

A

BILL

further to amend the Bengal Tenancy Act, 1885.

Preamble.

WHEREAS it is expedient further to amend the Bengal Tenancy Act, 1885, in the manner hereinafter appearing; VIII of 1885.

AND WHEREAS the previous sanction of the Governor General under sub-section (*3*) of section 80A of the Government of India Act has been obtained to the passing of this Act; 5 & 6 Geo. V. c. 61; 6 & 7 Geo. V. c. 37; 9 & 10 Geo. V. c. 101.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Tenancy (Amendment) Act, 1929.

Amendment of section 1 of Act VIII of 1885.

2. In clause (*iii*) of sub-section (*3*) of section 1 of the Bengal Tenancy Act, 1885 (hereinafter referred to as the said Act)—

(*a*) the words "lands other than agricultural lands situated within" shall be omitted; and

(*b*) after the words "the Local Government" the following proviso shall be inserted, namely:—

"Provided that a notification under this clause shall be no bar to the operation of this Act in respect of agricultural lands situated within the area specified in such notification.".

Amendment of section 12.

3. In section 12 of the said Act—

(*a*) in sub-section (*2*) for the words "shall not register" the words "shall not accept for registration" shall be substituted; and

(*b*) in sub-section (*3*) for the words "When the registration of any such instrument is complete" the words "When any such instrument is admitted to registration" and for the words "a notice of the transfer and registration" the words "the notice of the transfer" shall be substituted.

Amendment of section 26C.

4. In section 26C of the said Act—

(*a*) in sub-section (*2*) for the words "shall not register" the words "shall not accept for registration" shall be substituted; and

(*b*) in sub-section (*3*) for the words "When the registration of any such instrument is complete" the words "When any such instrument is admitted to registration" shall be substituted.

The Bengal Tenancy (Amendment) Bill, 1929.

(Clauses 5-13.)

Amendment of section 26D.

5. In section 26D of the said Act—

(*a*) in clause (*ii*) of the second proviso after the words "amongst other purposes for" the words "the purpose of" shall be omitted; and

(*b*) in the third proviso after the words "within three degrees of the donor" the words "or any dedication for religious or charitable purposes not included in clause (*iii*) of the second proviso" shall be inserted, and for the words "in this section" the words "in clause (*d*) and clause (*e*) of this section" shall be substituted.

Amendment of section 49D.

6. In section 49D of the said Act, for the figures "85" the figure and letter "48H" shall be substituted.

Amendment of section 49J.

7. In sub-section (*i*) of section 49J of the said Act, for the words and figures "sections 86 and 87" the words and figures "sections 86, 86A and 87" shall be substituted.

Amendment of section 99A.

8. In clause (*a*) of sub-section (*1*) of section 99A of the said Act, for the word, figures and letter "and 26F" the figures, letters and word "26F and 48H" shall be substituted.

Amendment of section 104.

9. In clause (*b*) of section 104 of the said Act, for the word and figures "section 192" the word and figures "section 191" shall be substituted.

Amendment of section 146A.

10. In clause (*iii*) of sub-section (*3*) of section 146A of the said Act, for the words, figures and letters "section 26E or section 26F" the words, figures and letters "section 26C or section 26E" shall be substituted.

Amendment of section 160.

11. In clause (*ff*) of section 160 of the said Act, after the words "rate of rent" the words "when he has been holding at such fixed rent or rate of rent from the time of the Permanent Settlement," shall be inserted.

Amendment of section 174A.

12. In section 174A of the said Act—

(*a*) in sub-section (*1*) after the words and figures "section 174" the words "within thirty days from the date of sale" shall be inserted; and

(*b*) after sub-section (*4*) the following shall be inserted, namely:—

"(5) Notwithstanding anything contained in this section, an application may be made under sub-section (*3*) of section 174 to set aside the sale, and where such application is allowed the order made under sub-section (*1*) confirming the sale shall be deemed to be cancelled.".

Repeal of section 175.

13. Section 175 of the said Act is hereby repealed.

The Bengal Tenancy (Amendment) Bill, 1929.

(Clauses 14-16.)

Insertion of new section 195A.

14. After section 195 of the said Act, the following section shall be inserted, namely:—

"*Protection for certain acts.*

Protection in certain cases for acts done in good faith.

195A. No suit or other proceeding shall be instituted against the Secretary of State for India in Council or against any officer of the Government in respect of anything done by the registering officer, the Collector or the Court in regard to the receiving, distribution or payment of the landlord's fee or the landlord's transfer fee:

Provided that nothing in this section shall prevent any person entitled to receive the amount of any such landlord's fee or landlord's transfer fee or any portion thereof from recovering the same from a person to whom it has been paid by the Collector or the Court."

Amendment of Schedule II.

15. In Schedule II to the said Act—

(*a*) in the main heading for the word "account" the words "of statement of accounts" shall be substituted; and

(*b*) in the sub-heading before the second form for the words "Particulars of Account" the words "Particulars of Statement of Account" shall be substituted.

Amendment of Articles 1 and 1 (*a*) in Part I of Schedule III.

16. In Part I of Schedule III to the said Act—

(*1*) in the first column of Article 1, for the words "or *raiyat*" the words "*raiyat* or under-*raiyat*" shall be substituted; and

(*2*) in the first column of Article 1 (*a*), after the words "non-occupancy-*raiyat*" the words "or under-*raiyat*" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The intention of this Bill is to provide an indemnity clause protecting Government and Government officers against claims by persons in respect of landlords' transfer fees which may have been paid by the Collector to others. It is also intended to provide that the right of a *raiyat* at fixed rates to hold at the fixed rent or rate of rent shall not be a protected interest unless he has held at such rent or rate of rent from the time of the Permanent Settlement.

2. The amendments of sections 12 and 26C are intended to prevent the accumulation of large sums on account of transfer fees with registering officers pending completion of registration.

3. Section 174A has been amended so as to provide for confirmation of sale within 30 days from the date of sale but the proviso permits of applications under section 174 (*3*) on the ground of material irregularity or fraud.

4. Certain other changes to rectify drafting defects and omissions have also been made in a few sections.

DARJEELING:
The 19th June, 1929.

P. C. MITTER,
Member in charge.

J. BARTLEY,
Secy. to the Govt. of Bengal.

The Calcutta Gazette

THURSDAY, NOVEMBER 21, 1929.

Part IV

Bills introduced in the Bengal Legislative Council, Reports of Select Committees presented or to be presented to that Council, and Bills published before introduction in that Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2886L., dated Calcutta, the 15th November, 1929.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons, which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information.—

THE BENGAL FOOD ADULTERATION (AMENDMENT) BILL, 1929.

A

BILL

further to amend the Bengal Food Adulteration Act, 1919.

Preamble.

WHEREAS it is expedient further to amend the Bengal Food Adulteration Act, 1919, in the manner hereinafter appearing ; Ben. Act VI of 1919.

It is hereby enacted as follows :—

Short title.

1. This Act may be called the Bengal Food Adulteration (Amendment) Act, 1929.

Amendment of section 6 of Bengal Act VI of 1919.

2. In section 6 of the Bengal Food Adulteration Act, 1919 (hereinafter referred to as the said Act)—

(*1*) in sub-section (*1*)—

(*a*) in clause (*a*) the following shall be omitted, namely :—

"(other than condensed, sterilized or desiccated milk in hermetically closed receptacles),"

(*b*) after clause (*i*) the following clause shall be inserted, namely :—

"(*ia*) in the case of condensed, sterilized or desiccated milk in hermetically closed receptacles each such receptacle shall be labelled and marked in such manner as the Local Government may prescribe and the article sold, exposed for sale or stored for sale, as the case may be, shall not contain a less proportion of non-fatty solids and of fat than such as the Local Government may prescribe ";

(*2*) after sub-section (*2*) the following sub-section shall be inserted, namely :—

"(*2a*) No person shall, directly or indirectly himself or by any other person on his behalf, sell, expose for sale or manufacture or store for sale any food in the preparation of which any of the article specified in clauses (*a*), (*b*), (*c*), (*d*) and (*e*) of sub-section (*1*) or any article notified by the Local Government under clause (*f*) of that sub-section has been used unless such article fulfils the conditions set forth in that sub-section ;"

(*3*) in sub-section (*3*) after the words "stored for sale by him" the words "or used in the preparation of any food sold, exposed for sale, or manufactured or stored for sale by him" shall be added ; and

(*4*) in sub-section (*4*) after the words "of that sub-section" the words "or the food referred to in sub-section (*2a*)" shall be inserted.

Repeal of section 8.

3. Section 8 of the said Act is hereby repealed.

Amendment of section 20.

4. After clause (*b*) of sub-section (*2*) of section 20 of the said Act, the following clause shall be inserted, namely :—

"(*bb*) specifying the manner in which each receptacle containing condensed, sterilized or desiccated milk sold, exposed for sale, or stored for sale, is to be labelled and marked, including the size of the lettering, the description of the contained article, its composition and directions for use."

The Bengal Food Adulteration (Amendment) Bill, 1929.

(Clause 5.)

Amendment of section 21.

5. In the table in section 21 of the said Act,—

(*1*) to the entry relating to sub-section (*1*) of section 6 the following shall be added in the second column, namely :—

" or is not labelled or marked in the prescribed manner "

(*2*) after the entry relating to sub-section (*2*) of section 6, the following shall be inserted, namely :—

" Section 6, sub-section (*2a*).	Sale, etc., of food containing any article which is not of the prescribed quality.	Two hundred rupees.	One thousand rupees or imprisonment for three months or both ;"

(*3*) the entry relating to section 8 shall be omitted.

STATEMENT OF OBJECTS AND REASONS.

In the United Kingdom the sale or exposure for sale of condensed milk is prohibited unless the receptacle containing the milk bears a label to show to what extent dilution is necessary and whether the milk when so diluted will contain sufficient butter fat to be fit for babies. A great deal of condensed milk of various brands is imported into this country ; some kinds are full of cream and some are skimmed. The label generally contains a description, but it is rarely prominent. Illiterate purchasers can seldom distinguish between the different brands ; and as the skimmed variety is injurious to bottle-fed infants brought up on it, legislation is necessary to control the sale of such milk. Section 6 of the Bengal Food Adulteration Act, 1919 (Bengal Act VI of 1919) which deals with constituents of food in the mufassal, excludes condensed, sterilized and desiccated milk from its operation. It is therefore proposed to amend section 6 of the said Act so as to bring condensed, sterilized, and desiccated milk within its purview and to forbid the sale or exposure for sale of such milk if it contains a less proportion of non-fatty solids and of fat than such as may be prescribed by the Local Government. Power has also been taken to make rules specifying the manner in which each receptacle containing condensed, sterilized, or desiccated milk is to be labelled and marked.

It has been held that section 6 of the Bengal Food Adulteration Act, 1919, does not apply to the sale of sweetmeats containing adulterated ingredients, the sale of which by themselves would be punishable under that section. It is therefore also proposed to amend section 6 of the Act, so as to bring within its purview the sale of sweetmeats or other articles containing such adulterated ingredients.

CALCUTTA :
The 6th November, 1929.

P. C. MITTER,
Member-in-charge.

J. BARTLEY,
Secy. to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2885L., dated Calcutta, the 15th November, 1929.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons, which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information.—

THE BENGAL MUNICIPAL (AMENDMENT) BILL, 1929.

A

BILL

further to amend the provisions of section 85 of the Bengal Municipal Act, 1884.

WHEREAS it is expedient further to amend the provisions of section 85 of the Bengal Municipal Act, 1884, so as to authorise the levying of an increased rate on the annual value of holdings in the Kurseong Municipality.

It is hereby enacted as follows:—

Short title.

1. This Act may be called the Bengal Municipal (Amendment) Act, 1929.

Amendment of section 85 of Bengal Act III of 1884.

2. In the first proviso to clause (*b*) of section 85 of the Bengal Municipal Act, 1884, after the word "Dacca" the word "Kurseong" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

The income of the Kurseong Municipality from sources other than water-rate and latrine fees is insufficient to cover the municipal expenditure on general purposes. Consequently the municipal commissioners have had to borrow from the Water Fund and the Latrine Fund in order to find money for outlay on general administration. As this procedure is quite irregular it is necessary to increase the income of the municipality from sources not earmarked for expenditure on particular objects. It is accordingly proposed to empower the municipal commissioners to assess the rate on holdings at 10 per cent. of the annual value as in Howrah, Darjeeling and Dacca, instead of the normal maximum of 7½ per cent. It is at the same time proposed to reduce the water-rate from 7 and 3½ per cent. to 5 and 2½ per cent.

P. C. MITTER,

Member-in-charge.

CALCUTTA:

The 10th March, 1929.

J. BARTLEY,

Secy. to the Bengal Legislative Council.

GOVERNMENT OF BENGAL.

Legislative Department.

NOTIFICATION.

No. 2891L., dated Calcutta, the 18th November, 1929.—His Excellency the Governor having been pleased to order, under rule 18 of the Bengal Legislative Council Rules, 1920, the publication of the following Bill, together with the Statement of Objects and Reasons, which accompanies it, in the *Calcutta Gazette*, the Bill and the Statement of Objects and Reasons are accordingly hereby published for general information:—

THE CALCUTTA MUNICIPAL (AMENDMENT) BILL, 1929.

A

BILL

further to amend the Calcutta Municipal Act, 1923.

Preamble. WHEREAS it is expedient further to amend the Calcutta Municipal Act, 1923, in the manner hereinafter appearing: Ben. Act III of 1923.

It is hereby enacted as follows:—

Short title. **1.** This Act may be called the Calcutta Municipal (Amendment) Act, 1929.

Amendment of section 45 of Bengal Act III of 1923. **2.** In section 45 of the Calcutta Municipal Act, 1923 (hereinafter referred to as the said Act)—

(*i*) sub-section (*4*) including the proviso shall be omitted and existing sub-section (*3*) shall be re-numbered as sub-section (*4*), and

(*ii*) the following shall be inserted as sub-section (*3*), namely:—

"(*3*) The Local Government shall fix such date by a notification in the *Calcutta Gazette* published not less than three months before such date."

Amendment of section 49. **3.** Clause (*g*) of sub-section (*4*) of section 49 of the said Act shall be omitted.

Amendment of section 407. **4.** In sub-section (*1*) of section 407 of the said Act—

(*1*) in clause (*a*) the following shall be omitted, namely:—

"(other than condensed, or desiccated milk in hermetically closed receptacles)";

(*2*) after clause (*i*) the following clause shall be inserted, namely:—

"(*ia*) in the case of condensed or desiccated milk in hermetically closed receptacles, each such receptacle must be labelled and marked in such manner as the Local Government may prescribe and the article sold, exposed or hawked about for sale, or stored for sale, as the case may be shall not contain a less proportion of non-fatty solids and of milk fat than such as the Local Government may prescribe."

(*3*) in clause (*ii*)—

(*a*) the words "or other preservative," and "preservative or" shall be omitted, and

(*b*) after the words "colouring matter" where they occur for the second time the words "being vegetable matter only and" shall be inserted.

Repeal of section 411. **5.** Section 411 of the said Act is hereby repealed.

Amendment of section 475. **6.** In proviso (*i*) to section 475 of the said Act, for the figures "26" the figures "11" shall be substituted.

The Calcutta Municipal (Amendment) Bill, 1929.

Clauses 7—10.

7. In the tables in sections 488 and 489 of the said Act— Amendment of sections 488 and 489.

(*1*) to the entry relating to sub-section (*1*) of section 407 the following shall be added in the second column, namely:—

"or is not labelled or marked in the prescribed manner";

(*2*) the entry relating to section 411 shall be omitted.

8. In the reference to sections under the heading to Schedule III to the said Act, the figures "45" shall be omitted. Amendment of Schedule III.

9. In the third column against entry No. 56 in the table in Schedule VI to the said Act, the word "Ditto" shall be inserted. Amendment of Schedule VI.

10. In the reference to sections under the heading to Schedule XVIII to the said Act, for the figures and brackets "364(*11*)" the figures and brackets "364(*10*)" shall be substituted. Amendment of Schedule XVIII.

STATEMENT OF OBJECTS AND REASONS.

It is proposed to amend the Bengal Food Adulteration Act, 1919, so as to bring under regulation condensed sterilised and desiccated milk which at present is excluded from the provisions of section 5 of the Act. In order to make the practice in Calcutta and the mufassal uniform it is desirable that the corresponding provisions of the Calcutta Municipal Act, 1923, *viz.*, section 407 should also be amended. The present Bill provides for this. Opportunity has been taken to make a further amendment desired by the Corporation forbidding the use in butter of any preservative but salt.

2. Opportunity has also been taken to make the following amendments in the Act. These are all in the nature of drafting amendments and as such are non-controversial:—

(*a*) sub-section (*4*) with the proviso, of section 45 of the Act, which is meaningless, has been expunged and a new sub-section has been inserted to make the intention clear; consequential amendments have been made in section 49 and the heading to Schedule III;

(*b*) the mistake whereby section 26 instead of section 11 of the Land Acquisition Act, 1894, is mentioned in proviso (*i*) to section 475 has been corrected;

(*c*) the omission of the word "Ditto" from column 3 against entry No. 56 in Schedule VI of the Act has been rectified;

(*d*) the clerical mistake in the heading of Schedule XVIII has been corrected.

P. C. MITTER,
Member-in-charge.

CALCUTTA:
The 6th November, 1929.

J. BARTLEY,
Secy. to the Bengal Legislative Council.

The Calcutta Gazette

THURSDAY, NOVEMBER 21, 1929.

Part V

Acts of the Indian Legislature assented to by the Governor-General and Ordinances promulgated under section 72 of the Government of India Act.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT No. VIII OF 1929.

An Act to provide for the levy of a cess on soft coke despatched by rail from collieries in the provinces of Bengal and Bihar and Orissa.

WHEREAS it is expedient to provide for the creation of a fund to be expended by a Committee specially constituted in this behalf for the promotion of the interests of the soft coke industry in the provinces of Bengal and Bihar and Orissa;

AND WHEREAS for this purpose it is expedient to levy a cess on soft coke despatched by rail from collieries in the said provinces;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Indian Soft Coke Cess Act, 1929.

(*2*) It extends to the whole of British India, except Aden.

(*3*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "Committee" means the Soft Coke Cess Committee constituted under section 4;

(*b*) "prescribed" means prescribed by rules made under this Act; and

(*c*) "soft coke" means all coke which is unsuitable for metallurgical purposes.

Imposition of soft coke cess.

3. (*1*) There shall be levied and collected on all soft coke despatched by rail from collieries in the provinces of Bengal and Bihar and Orissa a cess at the rate of two annas per ton.

(*2*) The cess shall be collected by the Railway Administrations concerned by means of a surcharge on freight and shall be paid to the Committee, after deduction of the expenses of collection (if any), in such manner as may be prescribed.

Constitution of Soft Coke Cess Committee.

4. (*1*) The Governor General in Council shall constitute a Committee, consisting of the following members, to receive and expend the proceeds of the cess :—

(*i*) the Chief Mining Engineer to the Railway Board, *ex-officio;*
(*ii*) one person nominated by the Local Government of Bengal;
(*iii*) one person nominated by the Local Government of Bihar and Orissa;
(*iv*) seven persons nominated by the Indian Mining Federation; and
(*v*) one person nominated by the Indian Mining Association :

Provided that, if within the period prescribed in this behalf, any authority or body fails to make any nomination which it is entitled to make under this section, the Governor General in Council may himself nominate a member to fill the vacancy.

(*2*) The Chief Mining Engineer to the Railway Board shall be *ex-officio* President of the Committee.

(*3*) Where a nominated member dies, resigns, ceases to reside in British India or becomes incapable of acting, the Governor General in Council may, on the recommendation of the authority or body which would have been entitled to make the nomination if it had been a first nomination under sub-section (*1*), or where such recommendation is not made within the prescribed period, then on his own initiative, nominate a person to fill the vacancy.

(*4*) No act done by the Committee shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Committee.

Application of proceeds of soft coke cess.

5. The proceeds of the cess and any other monies received by the Committee shall be applied to meeting the expenses of the Committee and the cost of such measures as it may consider advisable to take for promoting the sale and improving the methods of manufacture of soft coke.

Keeping and auditing of accounts.

6. (*1*) The Committee shall keep accounts of all monies received and expended under section 5.

(*2*) Such accounts shall be examined and audited annually by auditors appointed in this behalf by the Governor General in Council; and such auditors may disallow any item which has, in their opinion, been expended out of any monies so received otherwise than as directed by or under this Act.

(*3*) If any item is disallowed, an appeal shall lie to the Governor General in Council, whose decision shall be final.

Power to make rules.

7. (*1*) The Governor General in Council may, after consulting the Committee and after previous publication, make rules to carry out the purposes of this Act.

(*2*) In particular and without prejudice to the generality of the foregoing power, such rules may provide for—

(*a*) the regulation of the nomination of members of the Committee, and the procedure of the Committee,
(*b*) the regulation of the levy, collection and payment of the cess, and
(*c*) the form of accounts to be kept and the publication of an abstract of such accounts with the report of the auditors thereon.

(*3*) All such rules shall be published in the Gazette of India.

Time during which sections 2 to 7 are to remain in force.

8. Sections 2 to 7 shall remain in force only until the 31st December, 1934 :

Provided that the Governor General in Council may, on the recommendation of the Committee, declare by notification in the Gazette of India, that the said sections shall continue in force for any further period specified in such notification.

Disposal of surplus proceeds.

9. When sections 2 to 7 cease to be in force, all monies and other property in the possession of the Committee shall revert to His Majesty.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information :—

ACT NO. IX OF 1929.

An Act further to amend the Indian Boilers Act, 1923, for certain purposes.

WHEREAS it is expedient further to amend the Indian Boilers Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows :— V of 1923.

Short title.

1. This Act may be called the Indian Boilers (Amendment) Act, 1929.

Amendment of section 2, Act V of 1923.

2. In clause (*b*) of section 2 of the Indian Boilers Act, 1923 (hereinafter referred to as the said Act), the words "for use outside such vessel" shall be omitted. V of 1923.

Amendment of section 34, Act V of 1923.

3. Section 34 of the said Act shall be re-numbered as sub-section (*2*) of section 34, and the following sub-section shall be inserted as sub-section (*1*) of that section, namely :—

Exemptions.

"34. (*1*) The Local Government may, by notification in the local official Gazette, exempt from the operation of this Act, subject to such conditions and restrictions as it thinks fit, any boilers or classes or types of boilers used exclusively for the heating of buildings or the supply of hot water,"

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT NO. X OF 1929.

An Act to provide for certain matters in connection with the taking of the Census.

WHEREAS it has been determined to take a census of British India during the year 1931, and it is expedient to provide for certain matters in connection with the taking of such census; It is hereby enacted as follows:—

Short title and extent.

1. (*1*) This Act may be called the Indian Census Act, 1929.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

Appointment of census-officers.

2. (*1*) The Local Government may appoint any person to take, or aid in, or supervise the taking of, the census within any specified local area.

(*2*) Persons so appointed shall be called census officers.

(*3*) The Local Government may delegate to such authority, as it thinks fit, the power of appointing census-officers which is conferred by this section.

Proof of appointment of census-officers and their status as public servants.

3. (*1*) A declaration in writing, signed by any officer authorised by the Local Government in this behalf, that any person has been duly appointed a census-officer for any local area shall be conclusive proof of such appointment.

(*2*) All census-officers shall be deemed to be public servants within the meaning of the Indian Penal Code. XLV of 1860.

Discharge of duties of census-officers in certain cases.

4. (*1*) (*a*) Every officer in command of any body of men belonging to His Majesty's naval, military or air forces or to His Majesty's Indian Marine Service or of any vessel of war,

(*b*) every person (except a pilot or harbour-master) having charge or control of a vessel,

(*c*) every person in charge of a lunatic asylum, hospital, workhouse, prison, reformatory or lock-up or of any public, charitable, religious or educational institution,

(*d*) every keeper, secretary or manager of any *sarai*, hotel, boarding-house, lodging-house, emigration depôt or club, and

(*e*) every occupant of immoveable property who has at the time of the taking of the census not less than twenty persons living on or in such property, and every manager or officer of a railway or other commercial or industrial establishment who has at such time not less than ten persons employed under him,

shall, if so required by the District Magistrate or by such officer as the Local Government may appoint in this behalf, perform such of the duties of a census-officer in relation to the persons who at the time of the taking of the census are under his command or charge, or are inmates of his house or present on or in such immoveable property or are employed under him, as such Magistrate or officer may, by written order, direct.

(*2*) All the provisions of this Act relating to census-officers shall apply, so far as they can be made applicable, to all persons while performing such duties under this section, and any person refusing or neglecting to perform any duty which he is directed under this section to perform shall be deemed to have committed an offence under section 187 of the Indian Penal Code. XLV of 1860.

Power of District Magistrate to call upon certain persons to give assistance.

5. (*1*) The District Magistrate, or such officer as the Local Government may appoint in this behalf for any local area, may, by written order, which shall have effect throughout the limits of his district or of such local area, as the case may be, call upon—

(*a*) all owners and occupiers of land, tenure-holders, farmers, assignees of land-revenue and lessees of fisheries under the Burma Fisheries Act, 1905, or the Upper Burma Land and Revenue Regulation, 1889, or their agents, Bur. Act III of 1905. III of 1889.

(*b*) all village-officers and servants in estates as defined in the Madras Proprietary Estates' Village Service Act, 1894, and Mad. Act II of 1894.

(*c*) all members of panchayats appointed under the Village Chaukidari Act, 1870, or the Sylhet and Cachar Rural Police Regulation, 1883, or members of union boards established under the Bengal Village Self-Government Act, 1919, all ghatwals, Unit-tahsildars and members of a panchayat appointed under the Bihar and Orissa Village Administration Act, 1922, all members of village-authorities constituted under the Assam Local Self-Government Act, 1915, or the Assam Rural Self-Government Act, 1926, and all village-headmen in the Kumaun Division of the United Provinces, Ben. Act VI of 1870. I of 1883. Ben. Act V of 1919. B. & O. Act III of 1922. Assam Act I of 1915. Assam Act VII of 1926.

to give such assistance as he needs towards the taking of a census of the persons who are at the time of the taking of the census on the lands of such owners, occupiers, holders, farmers and assignees, or within the limits of such fisheries or in the villages or other areas for which such village-officers and servants, panchayats, union boards, village-authorities, ghatwals, Unit-tahsildars or village-headmen are appointed, as the case may be.

(*2*) Such order shall specify the nature of the assistance required, and such owners, occupiers, holders, farmers, assignees and lessees, or their agents, and such village-officers and servants, the members of such panchayats, union boards and village-authorities, and such ghatwals, Unit-tahsildars and village-headmen shall be bound to obey it.

Asking of questions by census-officer.

6. Every census-officer may ask all such questions of all persons within the limits of the local area for which he is appointed as, by instructions issued in this behalf by the Local Government and published in the official Gazette, he may be directed to ask.

Obligation to answer questions.

7. Every person of whom any question is asked under the last foregoing section shall be legally bound to answer such question to the best of his knowledge or belief:

Provided that no person shall be bound to state the name of any female member of his household, and no woman shall be bound to state the name of her husband or deceased husband or of any other person whose name she is forbidden by custom to mention.

Occupier to allow access, and permit affixing of numbers.

8. Every person occupying any house, enclosure, vessel or other place shall allow census-officers such access thereto as they may require for the purposes of the census, and as, having regard to the customs of the country, may be reasonable, and shall allow them to paint on or affix to the place such letters, marks or numbers as may be necessary for the purpose of the census.

Occupier or manager to fill up schedule.

9. (*1*) Subject to such orders as the Local Government may issue in this behalf, any census-officer may leave, or cause to be left,

(*a*) at any dwelling-house within the local area for which he is appointed, or

(*b*) with any manager or officer of any commercial or industrial establishment who has at the time of the taking of the census not less than ten persons employed under him,

a schedule for the purpose of its being filled up by the occupier of such house or of any specified part thereof, or by such manager or officer with such particulars as the Local Government may direct regarding the inmates of such house or part, or the person employed under such manager or officer at the time of the taking of the census, as the case may be.

(2) When any such schedule has been so left, the occupier of the house or part to which it relates, or the manager or officer with whom it is left, shall fill it up, or cause it to be filled up to the best of his knowledge or belief, so far as regards the inmates of such house or part, or the persons employed under him at the time aforesaid, as the case may be, and shall sign his name thereto, and, when so required, shall deliver the schedule so filled up and signed to the census-officer or to such person as the census-officer may direct.

Penalties.

10. In any of the following cases, namely:—

(a) if a census-officer or a person lawfully required to give assistance towards the taking of a census refuses or neglects to use reasonable diligence in performing any duty imposed upon him or in obeying any order issued to him in accordance with this Act or with any rule duly made thereunder,

(b) if a census-officer intentionally puts any offensive or improper question or knowingly makes any false return, or, without the previous sanction of the Governor General in Council or the Local Government, discloses any information which he has received by means of or for the purposes of a census return,

(c) if any person refuses to answer to the best of his knowledge or belief any question asked of him by a census-officer which he is legally bound by section 7 so to answer,

(d) if any person occupying any house, enclosure, vessel or other place refuses to allow a census-officer such reasonable access thereto as he is required by section 8 to allow,

(e) if any person removes, obliterates, alters or injures before the 31st day of March, 1931, any letters, marks or numbers which have been painted or affixed for the purposes of the census,

(f) if any occupier of a dwelling-house or part thereof or any person with whom a schedule is left under section 9 knowingly and without sufficient cause fails to comply with the provisions of section 9, or makes any false return under that section,

he shall be punishable with fine which may extend to fifty rupees.

Jurisdiction in prosecutions

11. (1) The Government may, by notification in the official Gazette, declare before what classes of Magistrates prosecutions under this Act may be instituted.

(2) Unless and until a notification is published under sub-section (1), all prosecutions under this Act shall, in the towns of Calcutta, Madras and Bombay, be instituted before a Presidency Magistrate, and elsewhere, before the District Magistrate.

(3) No prosecution under this Act shall be instituted except with the previous sanction of the Local Government, or of some officer authorised by the Local Government in this behalf.

Records of census not open to inspection or admissible in evidence in certain proceedings.

12. No person shall have a right to inspect any book, register or record made by a census-officer in the discharge of his duty as such officer or any schedule delivered under section 9, and notwithstanding anything to the contrary in the Indian Evidence Act, 1872, no entry in any such book, register, record or schedule shall be admissible as evidence in any civil proceeding or any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1898. I of 1872 V of 1898

Temporary suspension of local enactments and rules as to mode of taking census in municipalities.

13. Notwithstanding anything in any enactment or rule with respect to the mode in which a census is to be taken in any municipality, the municipal authority may, at the time appointed for the taking of the census of British India during the year 1931, cause the census of the municipality to be taken wholly or in part by any method authorised by this Act.

Power in regard to expenses.

14. Notwithstanding anything in any enactment or rule, in regard to municipal, local, union or village funds, the Local Government may direct that the whole or any part of any expenses incurred for anything done in accordance with this Act may be charged to any municipal, local, union or village fund constituted for, and on behalf of, the area within which such expenses were incurred.

Power to make rules.

15. (*1*) The Governor General in Council may make rules for carrying out the purposes of this Act.

(*2*) In particular, and without prejudice to the generality of the foregoing power, the Governor General in Council may make rules providing—

(*a*) for the appointment of census-officers and of persons to perform any of the duties of census-officers or to give assistance towards the taking of a census, and for the general instructions to be issued to such officers or persons;

(*b*) for the enumerating of persons employed on railways and their families and of other classes of the population for whom it may be necessary or expedient to make special provision; and

(*c*) for the enumeration of persons travelling on the night when a census is taken.

(*3*) The Governor General in Council may, by general or special order, direct that all or any of the powers conferred upon him by this section may also be exercised by any Local Government with respect to the territories administered by it.

L. GRAHAM,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT NO. XI OF 1929.

An Act further to amend the Calcutta Pilots Act, 1859, and the Indian Ports Act, 1908, in order to vest the control of the Bengal Pilot Service in the Governor General in Council.

WHEREAS it is expedient further to amend the Calcutta Pilots Act, 1859 and the Indian Ports Act, 1908, in order to vest the control of the Bengal Pilot Service in the Governor General in Council; It is hereby enacted as follows:— XII of 1859. XV of 1908.

Short title and commencement.

1. (*1*) This Act may be called the Bengal Pilot Service (Centralisation of Administration) Act, 1929.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the Gazette of India, appoint.

Amendment of Act XII of 1859.

2. (*1*) In sections 2, 3, 4, 17, 18, 19 and 20 of the Calcutta Pilots Act, 1859, for the words "Lieutenant-Governor of Bengal" or the words "said Lieutenant-Governor" as the case may be, wherever they occur, the words "Governor General in Council" shall be substituted. XII of 1859.

(*2*) In section 9 of the said Act, for the words "Magistrate of Police" the words "Presidency Magistrate" shall be substituted.

(*3*) In sub-section (*1*) of section 15 of the said Act, for the words "Local Government" the words "Governor General in Council" shall be substituted.

Amendment of section 35, Act XV of 1908.

3. To sub-section (*1*) of section 35 of the Indian Ports Act, 1908, the following proviso shall be added, namely:— XV of 1908.

"Provided that the rates of fees for pilotage within the Port of Calcutta shall be fixed by the Governor General in Council."

Saving of things done under Act XII of 1859 and Act XV of 1908.

4. Where anything done under the Calcutta Pilots Act, 1859, or the Indian Ports Act, 1908, is in force immediately prior to the commencement of this Act, it shall be deemed, as from the commencement of this Act, to have been done under the said Acts as hereby amended. XII of 1859. XV of 1908.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT No. XII OF 1929.

An Act further to amend the Indian Income-tax Act, 1922, for certain purposes.

WHEREAS it is expedient further to amend the Indian Income-tax Act, 1922, for the purposes hereinafter appearing: It is hereby enacted as follows:— XI of 1922.

Short title and commencement.

1. (*1*) This Act may be called the Indian Income-tax (Provident Funds Relief) Act, 1929.

(*2*) It shall come into force on such date as the Governor General in Council may, by notification in the *Gazette of India*, appoint.

Amendment of section 4, Act XI of 1922.

2. To sub-section (*3*) of section 4 of the Indian Income-tax Act, 1922 (hereinafter referred to as the said Act), the following clause shall be added, namely:— XI of 1922.

"(*ix*) Any income received by trustees on behalf of a recognised provident fund as defined in clause (*a*) of section 58A."

Amendment of section 15, Act XI of 1922.

3. In sub-section (*3*) of section 15 of the said Act, after the word and figure "section 7" the words "and any sums exempted under sub-section (*1*) of section 58F" shall be inserted.

Amendment of section 58, Act XI of 1922.

4. In section 58 of the said Act,—

(*a*) in the proviso to sub-section (*1*), after the word and figures "section 57" the words, figures and letter "and under section 58H" shall be added; and

(*b*) in sub-section (*2*), after the word and figures "section 57" the words, figures and letter "and section 58H" shall be inserted.

Insertion of new Chapter IXA in Act XI of 1922.

5. After Chapter IX of the said Act the following Chapter shall be inserted, namely:—

"CHAPTER IXA.

SPECIAL PROVISIONS RELATING TO CERTAIN CLASSES OF PROVIDENT FUNDS.

Definitions.

58A. In this Chapter, unless there is anything repugnant in the subject or context,—

(*a*) a 'recognised provident fund' means a provident fund which has been and continues to be recognised by the Commissioner, in accordance with the provisions of this Chapter;

(*b*) an 'employer' means—

(*i*) a Hindu undivided family, company, firm or other association of individuals or persons, or

(*ii*) an individual engaged in a business, profession or vocation whereof the profits and gains are assessable to income-tax under section 10 or section 11, maintaining a provident fund for the benefit of his or its employees;

(*c*) an 'employee' means an employee participating in a provident fund, but does not include a personal or domestic servant;

(*a*) a ' contribution ' means any sum credited by or on behalf of any employee out of his salary, or by an employer out of his own monies, to the individual account of an employee, but does not include any sum credited as interest;

(*e*) the ' balance to the credit ' of an employee means the total amount to the credit of his individual account in a provident fund at any time;

(*f*) the ' annual accretion ' to the balance to the credit of an employee means the increase to such balance in any year, arising from contributions and interest;

(*g*) the ' accumulated balance due ' to an employee means the balance to his credit, or such portion thereof as may be claimable by him under the regulations of the fund, on the day he ceases to be an employee of the employer maintaining the fund; and

(*h*) the ' regulations of a fund ' means the special body of regulations governing the constitution and administration of a particular provident fund.

The according and withdrawal of recognition.

58B. (*1*) The Commissioner of Income-tax may accord recognition to any provident fund which, in his opinion, satisfies the conditions prescribed in section 58C and the rules made thereunder, and may, at any time, withdraw such recognition if, in his opinion, the provident fund contravenes any of those conditions.

(*2*) The Governor General in Council may, at his discretion, direct the Commissioner of Income-tax to refuse to accord recognition to any provident fund, or may, at any time, withdraw recognition from any recognised provident fund.

(*3*) An order according recognition shall take effect on such date as the Commissioner may fix in accordance with any rules the Central Board of Revenue may make in this behalf, such date not being later than the last day of the financial year in which the order is made.

(*4*) An order withdrawing recognition shall take effect from the day on which it is made.

(*5*) An employer objecting to an order of the Commissioner refusing to recognise a provident fund may appeal, within sixty days of such order, to the Central Board of Revenue.

The appeal shall be in the form and shall be verified in the manner prescribed by the Central Board of Revenue.

Conditions to be satisfied by a recognised provident fund.

58C. (*1*) In order that a provident fund may receive and retain recognition, it shall satisfy the conditions set out below and any other conditions which the Governor General in Council may, by rule, prescribe—

(*a*) All employees shall be employed in India, or shall be employed by an employer whose principal place of business is in British India.

(*b*) The contributions of an employee in any year shall be a definite proportion of his salary for that year, and shall be deducted by the employer from the employee's salary in that proportion, at each periodical payment of such salary in that year, and credited to the employee's individual account in the fund.

(*c*) Subject to the provisions of section 58D, the contributions of an employer to the individual account of an employee in any year shall not exceed the amount of the contributions of the employee in that year, and shall be credited to the employee's individual account at intervals not exceeding one year.

(*d*) The fund shall consist of contributions as above specified, of accumulations thereof, and of interest (simple and compound), credited in respect of such contributions and accumulations, and of securities purchased therewith, and of no other sums.

(*e*) The fund shall be vested in two or more trustees, under a trust which shall not be revocable save with the consent of all the beneficiaries.

(*f*) The employer shall not be entitled to recover any sum whatsoever from the fund, save in cases where the employee is dismissed for misconduct or voluntarily leaves his employment otherwise than on account of ill-health or other unavoidable cause before the expiration of the term of service specified in this behalf in the regulations of the fund.

In such cases the recoveries made by the employer shall be limited to the contributions made by him to the individual account of the employee, and to interest (simple and compound) credited in respect of such contributions and accumulations thereof, in accordance with the regulations of the fund.

(*g*) The accumulated balance due to an employee shall be payable on the day he ceases to be an employee of the employer maintaining the fund.

(*h*) Save as provided in clause (*g*), or in accordance with such conditions and restrictions as the Governor General in Council may, by rules, prescribe, no portion of the balance to the credit of an employee shall be payable to him.

(*2*) Where there is a repugnance between any regulation of a recognised provident fund and any provision of this Chapter or of the rules made thereunder, the regulation shall, to the extent of the repugnance, be of no effect.

The Commissioner may, at any time, require that such repugnance shall be removed from the regulations of the fund.

Power to relax restrictions of employer's contributions in certain cases.

58D. Subject to any rules which the Governor General in Council may make in this behalf, the Commissioner may, in respect of any particular fund, relax the provisions of condition (*c*) of sub-section (*1*) of section 58C—

(*a*) so as to permit the payment of larger contributions by an employer to the individual accounts of employees whose salary does not exceed five hundred rupees per mensem; and

(*b*) so as to permit the crediting by employers to the individual accounts of employees of periodical bonuses or other contributions of a contingent nature, where the calculation and payment of such bonuses or other contributions is provided for on definite principles by the regulations of the fund.

Annual accretion deemed to be income received.

58E. The annual accretion in any year to the balance at the credit of an employee participating in a recognised provident fund shall be deemed to have been received by him in that year and shall be included in his total income for that year, and, subject to the exemptions specified in section 58F, shall be liable to income-tax and super-tax:

Provided that, for the purpose of sub-section (*3*) of section 15, out of such annual accretion only the employee's own contributions shall be included in his total income.

Exemption of annual accretion from income-tax.

58F. (*1*) An employee shall not be liable to pay income-tax on contributions to his individual account in a recognised provident fund, in so far as the aggregate of such contributions in any year does not exceed one-sixth of his salary in that year.

(*2*) In the accounts of a recognised provident fund, the contributions exempted from income-tax under sub-section (*1*) and accumulations thereof shall be shown separately, and interest thereon shall be calculated and shown separately. Such interest shall be exempt from payment of income-tax, in so far as it is allowed at a rate not exceeding such rate as the Governor General in Council may by notification in the Gazette of India, fix in this behalf.

Exemption of accumulated balance from income-tax and super-tax.

58G. Where an employee participating in a recognised provident fund has rendered continuous service with his employers for a period of not less than five years, and the accumulated balance due to him becomes payable, such accumulated balance shall be exempt from payment of income-tax and super-tax, and shall be excluded from the computation of his total income:

Provided that the Commissioner of Income-tax may allow such exemption and exclusion where the employee has rendered continuous service with the employer for a period of less than five years, if, in his opinion, the service has been terminated by reason of the employee's ill-health, or by the contraction or discontinuance of the employer's business, or other cause beyond the control of the employee.

(2) Where exemption from payment of income-tax is not allowed under the provisions of sub-section (1), the Income-tax Officer shall calculate the total of the various sums of income-tax from the payment of which the contributions and interest credited to the employee's individual account have been exempted under the provisions of sub-sections (1) and (2) of section 58F, and such total shall be payable by the employee, in addition to any other income-tax for which he may be liable for the year in which the accumulated balance due to him becomes payable.

Deduction at source of income-tax payable on accumulated balances due.

58H. The trustees of a recognised provident fund or other person authorised by the regulations of the fund to make payment of accumulated balances due to employees, shall, at the time an accumulated balance due to an employee is paid, deduct therefrom any income-tax payable under sub-section (2) of section 58G and any income-tax and super-tax payable on an employee's total income as determined under sub-section (3) of section 58J, and sub-section (4) to (9) of section 18 shall apply as if the sum to be deducted were income-tax payable under the head 'Salaries.'

Accounts of recognised provident funds.

58I. (1) The accounts of a recognised provident fund shall be maintained by the trustees of the fund and shall be in such form and for such periods, and shall contain such particulars as the Central Board of Revenue may prescribe.

(2) The accounts shall be open to inspection at all reasonable times by Income-tax authorities, and the trustees shall furnish to the Income-tax Officer such abstracts thereof as the Central Board of Revenue may prescribe.

Treatment of balances in newly recognised provident funds.

58J. (1) Where recognition is accorded to a provident fund with existing balances, an account shall be made of the fund up to the day before the day on which the recognition takes effect, showing the balance to the credit of each employee on such day, and containing such further particulars as the Central Board of Revenue may perscribe.

(2) The account shall also show in respect of the balance to the credit of each employee the amount thereof which is to be transferred to that employee's account in the recognised provident fund, and such amount (hereinafter called his transferred balance) shall be shown as the balance to his credit in the recognised provident fund on the date on which the recognition of the fund takes effect, and sub-sections (3) and (4) shall apply thereto.

Any portion of the balance to the credit of an employee in the existing fund which is not transferred to the recognised fund shall be excluded from the accounts of the recognised fund and shall be liable to income-tax and super-tax in accordance with the provisions of this Act other than this Chapter.

(3) Subject to such rules as the Central Board of Revenue may make in this behalf, the Income-tax Officer shall make a calculation of the aggregate of all sums comprised in a transferred balance which would have been liable to income-tax if this Chapter had been in force from the date of the institution of the fund, without regard to any tax which may have been paid on any such sum, and such aggregate (if any) shall be deemed to be income received by the employee in the year in which the recognition of the fund takes effect, and shall be included in the employee's total income for that year; and, for the purposes of assessment, the remainder of the transferred balance shall be disregarded, but no other exemption or relief, by way of refund or otherwise, shall be granted in respect of any sum comprised in such transferred balance:

Provided that, in cases of serious accounting difficulty, the Commissioner shall have power subject to the said rules, to make a summary calculation of such aggregate.

(*4*) Notwithstanding anything contained in condition (*h*) of sub-section (*1*) of section 58C, an employee, in order to enable him to pay the amount of tax assessed on his total income as determined under sub-section (*3*), shall be entitled to withdraw from the balance to his credit in the recognised provident fund a sum not exceeding the difference between such amount and the amount to which he would have been assessed if the transferred balance had not been included in his total income.

(*5*) Nothing in this section shall effect the rights of the persons administering an unrecognised provident fund or dealing with it, or with the balance to the credit of any individual employee, before recognition is accorded, in any manner which may be lawful.

Treatment of fund transferred by employer to trustee.

58K. (*1*) Where an employer who maintains a provident fund (whether recognised or not) for the benefit of his employees and has not transferred the fund or any portion of it, transfers such fund or portion to trustees in trust for the employees participating in the fund, the amount so transferred shall be deemed to be of the nature of capital expenditure.

(*2*) When an employee participating in such fund is paid the accumulated balance due to him therefrom, any portion of such balance as represents his share in the amount so transferred to the trustee (without addition of interest, and exclusive of the employee's contributions and interest thereon) shall be deemed to be an expenditure by the employer within the meaning of clause (*ix*) of sub-section (*2*) of section 10, incurred in the year in which the accumulated balance due to the employee is paid.

Provisions relating to rules.

58L. (*1*) All rules made under this Chapter shall be subject to the provisions of sub-sections (*4*) and (*5*) of section 59.

(*2*) In addition to any power conferred by this Chapter, the Governor General in Council may make rules—

(*a*) prescribing the statements and other information to be submitted with an application for recognition;

(*b*) limiting the contributions to a recognised provident fund by employees of a company who are shareholders in the company;

(*c*) providing for the assessment by way of penalty of any consideration received by an employee for an assignment of, or creation of a charge upon, his beneficial interest in a recognised provident fund;

(*d*) determining the extent to and the manner in which exemption from payment of income-tax and super-tax may be granted in respect of contributions and interest credited to the individual accounts of employees in a provident fund from which recognition has been withdrawn; and

(*e*) generally, to carry out the purpose of this Chapter and to secure such further control over the recognition of provident funds and the administration of recognised provident funds as he may deem requisite.

Application of this Chapter.

58M. This Chapter shall not apply to any provident fund to which the Provident Funds Act, 1925, applies." XIX of 1925.

L. GRAHAM,

Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information :—

ACT No. XIV OF 1929.

An Act further to amend the Indian Cotton Cess Act, 1923, for certain purposes.

WHEREAS it is expedient further to amend the Indian Cotton Cess Act, 1923, for the purposes hereinafter appearing; It is hereby enacted as follows :— XIV of 1923.

Short title.

1. This Act may be called the Indian Cotton Cess (Amendment) Act, 1929.

Amendment of section 4, Act XIV of 1923.

2. In section 4 of the Indian Cotton Cess Act, 1923 (hereinafter referred to as the said Act),— XIV of 1923.

(*i*) in clause (*i*), for the words "Agricultural Adviser to the Government of India," the words "the Vice-Chairman of the Imperial Council of Agricultural Research" shall be substituted; and

(*ii*) after clause (*i*) the following clause shall be inserted, namely: "(*ia*) the Expert Adviser to the Imperial Council of Agricultural Research in agricultural matters;".

Amendment of section 5, Act XIV of 1923.

3. In sub-section (*2*) of section 5 of the said Act, for the words "The Agricultural Adviser to the Government of India," the words "The Vice-Chairman of the Imperial Council of Agricultural Research" shall be substituted.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT No. XV OF 1929.

An Act further to amend the Indian Registration Act, 1908, for a certain purpose.

WHEREAS it is expedient further to amend the Indian Registration Act, 1908, for the purpose hereinafter appearing; It is hereby enacted as follows:— XVI of 1908.

Short title.

1. This Act may be called the Indian Registration (Amendment) Act, 1929.

Repeal of section 56, Act XVI of 1908.

2. Section 56 of the Indian Registration Act, 1908, is hereby repealed. XVI of 1908.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT No. XIX OF 1929.

An Act to restrain the solemnisation of child marriages.

WHEREAS it is expedient to restrain the solemnisation of child marriages; It is hereby enacted as follows:—

Short title, extent and commencement.

1. (*1*) This Act may be called the Child Marriage Restraint Act, 1929.

(*2*) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(*3*) It shall come into force on the 1st day of April, 1930.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*a*) "child" means a person who, if a male, is under eighteen years of age, and if a female, is under fourteen years of age;

(*b*) "child marriage" means a marriage to which either of the contracting parties is a child;

(*c*) "contracting party" to a marriage means either of the parties whose marriage is thereby solemnised; and

(*d*) "minor" means a person of either sex who is under eighteen years of age.

Punishment for male adult below twenty-one years of age marrying a child.

3. Whoever, being a male above eighteen years of age and below twenty-one, contracts a child carriage shall be punishable with fine which may extend to one thousand rupees.

Punishment for male adult above twenty-one years of age marrying a child.

4. Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

Punishment for solemnising a child marriage.

5. Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Punishment for parent or guardian concerned in a child marriage.

6. (*1*) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.

(*2*) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised.

Imprisonment not to be awarded for offences under section 3.

7. Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Indian Penal Code, a Court sentencing an offender under section 3 shall not be competent to direct that, in default of payment of the fine imposed, he shall undergo any term of imprisonment. X of 1897. XLV of 1860.

Jurisdiction under this Act.

8. Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1898, no Court other than that of a Presidency Magistrate or a District Magistrate shall take cognizance of, or try, any offence under this Act. V of 1898.

Mode of taking cognizance of offence.

9. No Court shall take cognizance of any offence under this Act save upon complaint made within one year of the solemnisation of the marriage in respect of which the offence is alleged to have been committed.

Preliminary inquiries into offences under this Act.

10. The Court taking cognizance of an offence under this Act shall, unless it dismisses the complaint under section 203 of the Code of Criminal Procedure, 1898, either itself make an inquiry under section 202 of that Code, or direct a Magistrate of the first class subordinate to it to make such inquiry. V of 1898.

Power to take security from complainant.

11. (*1*) At any time after examining the complainant and before issuing process for compelling the attendance of the accused, the Court shall, except for reasons to be recorded in writing, require the complainant to execute a bond, with or without sureties, for a sum not exceeding one hundred rupees, as security for the payment of any compensation which the complainant may be directed to pay under section 250 of the Code of Criminal Procedure, 1898; and if such security is not furnished within such reasonable time as the Court may fix, the complaint shall be dismissed. V of 1898.

(*2*) A bond taken under this section shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, and Chapter XLII of that Code shall apply accordingly. V of 1898.

L. GRAHAM,

Secy. to the Govt. of India.

The Calcutta Gazette

THURSDAY, DECEMBER 5, 1929.

Part V

Acts of the Indian Legislature assented to by the Governor-General and Ordinances promulgated under section 72 of the Government of India Act.

LEGISLATIVE DEPARTMENT.

ERRATA.

In Act No. XIX of 1929 as republished in Part V, page 44 of the *Calcutta Gazette* of the 21st November 1928:

(*i*) in section 1 (*1*) *for* "1929" *read* "1928".

(*ii*) in section 3 *for* "carriage" *read* "marriage."

J. BARTLEY,
Secy. to the Govt. of Bengal.

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The Calcutta Gazette

THURSDAY, DECEMBER 12, 1929.

Part V

Acts of the Indian Legislature assented to by the Governor-General and Ordinances promulgated under section 72 of the Government of India Act.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information :—

ACT No. XVIII OF 1929.

An Act further to amend the Indian Succession Act, 1925, for certain purposes.

WHEREAS it is expedient further to amend the Indian Succession Act, 1925, for the purposes hereinafter appearing; It is hereby enacted as follows :—

Short title.

1. This Act may be called the Indian Succession (Amendment) Act, 1929.

Amendment of section 2, Act XXXIX of 1925.

2. After clause (*b*) of section 2 of the Indian Succession Act, 1925 (hereinafter referred to as the said Act), the following clause shall be inserted, namely :— XXXIX of 1925.

"(*bb*) 'District Judge' means the Judge of a principal Civil Court of original jurisdiction;".

Amendment of section 57, Act XXXIX of 1925.

3. (*1*) Sub-section (*1*) of section 57 of the said Act shall be renumbered as section 57, and after clause (*b*) and before the proviso the word "and" and the following clause shall be added, namely:—

"(*c*) to all wills and codicils made by any Hindu, Buddhist, Sikh, or Jaina on or after the first day of January, 1927, to which those provisions are not applied by clauses (*a*) and (*b*):".

(*2*) Sub-section (*2*) of section 57 of the said Act shall be omitted.

Amendment of section 213, Act XXXIX of 1925.

4. In sub-section (*2*) of section 213 of the said Act, for the word "class" the word "classes" and for the words and figures "sub-section (*1*) of section 57" the words, letters and figures "clauses (*a*) and (*b*) of section 57" shall be substituted.

Repeals.

5. The enactments specified in the Schedule are hereby repealed.

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 5.*)

Year.	No.	Short title.
1926 ..	XXXVII ..	The Indian Succession (Amendment) Act, 1926.
1928 ..	XXI ..	The Indian Succession (Second Amendment) Act, 1928.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 1st October, 1929, and is hereby promulgated for general information:—

ACT No. XX OF 1929.

An Act further to amend the Transfer of Property Act, 1882 for certain purposes.

WHEREAS it is expedient further to amend the Transfer of Property Act, 1882, for the purposes hereinafter appearing; It is hereby enacted as follows:— IV of 1882.

Short title and commencement.

1. (*1*) This Act may be called the Transfer of Property (Amendment) Act 1929.

(*2*) It shall come into force on the first day of April, 1930.

Amendment of section 1, Act IV of 1882.

2. In section 1 of the Transfer of Property Act, 1882 (hereinafter referred to as the said Act), for the figures "1877" the figures "1908" shall be substituted. IV of 1882.

Amendment of section 2, Act IV of 1882.

3. In section 2 of the said Act, the word "Hindu" and the words "or Buddhist" shall be omitted.

Amendment of section 3, Act IV of 1882.

4. In section 3 of the said Act, for the last paragraph, containing the definition of "notice", the following shall be substituted, namely:—

"'a person is said to have notice' of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, if the instrument has been registered under sub-section (*2*) of section 30 of the Indian Registration Act, 1908, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act: XVI of 1908.

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Indian Registration Act, 1908, and the rules made thereunder, XVI of 1908.

(2) the instrument has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immoveable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material.

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Amendment of section 4, Act IV of 1882.

5. In section 4 of the said Act, for the figures "1877" the figures "1908" shall be substituted.

Amendment of section 5, Act IV of 1882.

6. In section 5 of the said Act, after the words "or to himself" the words "or to himself" shall be inserted; and to the same section the following paragraph shall be added, namely:—

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

Amendment of section 6, Act IV of 1882.

7. In section 6 of the said Act, after clause (*d*) the following clause shall be inserted, namely:—

"(*dd*) A right to future maintenance, in whatsoever manner arising, secured or determined, cannot be transferred".

Amendment of section 11, Act IV of 1882.

8. For the second paragraph of section 11 of the said Act beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely:—

"Where any such direction has been made in respect of one piece of immoveable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

Amendment of section 15, Act IV of 1882.

9. In section 15 of the said Act, for the words "as regards the whole class" the following words shall be substituted, namely:—

"in regard to those persons only and not in regard to the whole class".

Substitution of new sections for sections 16, 17 and 18, Act IV of 1882.

10. For sections 16, 17 and 18 of the said Act the following sections shall be substituted, namely:—

Transfer to take effect on failure of prior interest.

"16. Where, by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Direction for accumulation.

17. (*1*) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

(*a*) the life of the transferor, or

(*b*) a period of eighteen years from the date of the transfer,

such direction shall, save, as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(*2*) This section shall not affect any direction for accumulation for the purpose of—

(*i*) the payment of the debts of the transferor or any other person taking any interest under the transfer, or

(*ii*) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or

(*iii*) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

Transfer in perpetuity for benefit of public.

18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind."

Amendment of section 39, Act IV of 1882.

11. In section 39 of the said Act,—

(*a*) the words "with the intention of defeating such right" shall be omitted, and for the words "of such intention" the word "thereof" shall be substituted;

(*b*) the *Illustration* shall be omitted.

Amendment of section 40, Act IV of 1882.

12. In section 40 of the said Act, for the words "of the latter property or to compel its enjoyment in a particular manner," the words "in a particular manner of the latter property" shall be substituted.

Amendment of section 43, Act IV of 1882.

13. In section 43 of the said Act, after the word "person" the words "fraudulently or" shall be inserted.

Amendment of section 52, Act IV of 1882.

14. (*1*) In section 52 of the said Act,—

(*a*) for the words "active prosecution" the word "pendency" shall be substituted;

(*b*) for the words "a contentious" the word "any" shall be substituted; and

(*c*) after the words "suit or proceeding", where they occur for the first time, the words "which is not collusive and" shall be inserted.

(*2*) To the same section the following *Explanation* shall be added, namely:—

"*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

Substitution of new section for section 53, Act IV of 1882.

15. For section 53 of the said Act the following section shall be substituted, namely:—

Fraudulent transfer.

"53. (*1*) Every transfer of immoveable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(*2*) Every transfer of immoveable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made."

Insertion of new section 53A in Act IV of 1882.

16. After section 53 of the said Act the following section shall be inserted, namely:—

Part performance.

"53A. Where any person contracts to transfer for consideration any immoveable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof, or the transferee, being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof".

Amendment of section 55, Act IV of 1882.

17. In section 55 of the said Act,—

(*a*) in sub-clause (*a*) of clause (1), after the word "property" the words "or in the seller's title thereto" shall be inserted;

(*b*) in sub-clause (*b*) of clause (4), after the word "buyer", where it occurs for the second time, the words "any transferee without consideration or any transferee with notice of the non-payment," shall be inserted; and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added; and

(*c*) in sub-clause (*b*) of clause (6), the words "with notice of the payment" shall be omitted.

Substitution of new section for section 56, Act IV of 1882.

18. For section 56 of the said Act the following section shall be substituted, namely:—

Marshalling by subsequent purchaser.

"56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons claiming under him or of any other person who has for consideration acquired an interest in any of the properties."

Amendment of section 58, Act IV of 1882.

19. In section 58 of the said Act,—

(*a*) to clause (*c*) the following proviso shall be added, namely:—

"Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale";

(*b*) in clause (*d*)—

(*i*) after the words "Where the mortgagor delivers possession" the words "or expressly or by implication binds himself to deliver possession" shall be inserted;

(*ii*) for the words "and to appropriate them", the words "or any part of such rents and profits and to appropriate the same" shall be substituted; and

(*iii*) after the words "or partly in lieu of interest", for the word "and" the word "or" shall be substituted; and

(*c*) after clause (*e*) the following clauses shall be added, namely:—

"(*f*) Where a person in any of the following towns, namely, the towns of Calcutta, Madras, Bombay, Karachi, Rangoon, Moulmein, Bassein and Akyab, and in any other town which the Governor General in Council may, by notification in the Gazette of India, specify in this behalf, delivers to a creditor or his agent documents of title to immoveable property, with intent to create a security thereon, the transaction is called a mortgage by deposit of title-deeds.

(*g*) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage."

Amendment of section 59, Act IV of 1882.

20. In section 59 of the said Act,—

(*a*) after the words "a mortgage", where they first occur, the words "other than a mortgage by deposit of title-deeds" shall be inserted; and

(*b*) the third paragraph beginning with the words "Nothing in this section" and ending with the words "a security thereon" shall be omitted.

Insertion of new section 59A in Act IV of 1882.

21. After section 59 of the said Act the following section shall be inserted, namely:—

References to mortgagors and mortgagees to include persons deriving title from them.

"59A. Unless otherwise expressly provided, references in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively."

Amendment of section 60, Act IV of 1882.

22. In section 60 of the said Act,—

(*a*) for the word "payable" the word "due" shall be substituted;

(*b*) for the words "the mortgage-deed, if any, to the mortgagor" the following words shall be substituted, namely:—

"to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee";

(*c*) for the word "order" the word "decree" shall be substituted; and

(*d*) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

Insertion of new sections 60A and 60B in Act IV of 1882.

23. After section 60 of the said Act the following sections shall be inserted, namely:—

Obligation to transfer to third party instead of retransference to mortgagor.

"60A. (*1*) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

(*2*) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(*3*) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

Right to inspection and production of documents.

60B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Substitution of new section for section 61, Act IV of 1882.

24. For section 61 of the said Act and the *Illustration* thereto the following section shall be substituted, namely:—

Right to redeem separately or simultaneously.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary, when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Amendment of section 62, Act IV of 1882.

25. In section 62 of the said Act,—

(*a*) after the word "property", where it first occurs, the words "together with the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;

(*b*) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage-money," shall be substituted; and

(*c*) for the words "the principal money," where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

Amendment of section 63, Act IV of 1882.

26. In section 63 of the said Act, for the words "at the same rate of interest" the words "with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum" shall be substituted.

Insertion of new section 63A in Act IV of 1882.

27. After section 63 of the said Act the following section shall be inserted, namely:—

Improvements to mortgaged property.

"63A. (*1*) Where mortgaged property in possession of the mortgagee has during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (*2*), be liable to pay the cost thereof.

(*2*) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or, where no such rate is fixed, at the rate of nine per cent. per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor."

Amendment of section 64, Act IV of 1882.

28. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment of section 65, Act IV of 1882.

29. In section 65 of the said Act,—

(*a*) in clause (*d*), the words "for a term of years" shall be omitted; and

(*b*) the words "Nothing in clause (*c*), or in clause (*d*), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

Insertion of new section 65A in Act IV of 1882.

30. After section 65 of the said Act the following section shall be inserted, namely:—

Mortgagor's power to lease.

"65A. (*1*) Subject to the provisions of sub-section (*2*), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

(*2*) (*a*) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(*b*) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(*c*) No such lease shall contain a covenant for renewal.

(*d*) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(*e*) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years, and the lease shall contain a convenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(*3*) The provisions of sub-section (*1*) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (*2*) may be varied or extended by the mortgage-deed and, as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

Amendment of section 67, Act IV of 1882.

31. In section 67 of the said Act,—

(*a*) for the word "payable" the word "due" shall be substituted;

(*b*) for the words "an order", wherever they occur, the words "a decree" shall be substituted; and

(*c*) for clause (*a*) the following clause shall be substituted, namely:—

"(*a*) to authorise any mortgagee, other than a mortgagee by conditional sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose, to institute a suit for foreclosure, or an usufructuary mortgagee as such or a mortgagee by conditional sale as such to institute a suit for sale; or".

Insertion of new section 67A in Act IV of 1882.

32. After section 67 of the said Act the following section shall be inserted, namely:—

Mortgagee when bound to bring one suit on several mortgages.

"67A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage-money has become due."

Substitution of new section for section 68, Act IV of 1882.

33. For section 68 of the said Act the following section shall be substituted, namely:—

Right to sue for mortgage-money.

"68. (*1*) The mortgagee has a right to sue for the mortgage-money in the following cases and no others, namely:—

(*a*) where the mortgagor binds himself to repay the same;

(*b*) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;

(*c*) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;

(*d*) where, the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (*a*), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage-money.

(*2*) Where a suit is brought under clause (*a*) or clause (*b*) of sub-section (*1*), the Court may, at its discretion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

Amendment of section 69, Act IV of 1882.

34. In section 69 of the said Act,—

(*a*) the first paragraph beginning with the words "A power conferred by the mortgage-deed" and ending with the words "specify in this behalf" shall be numbered as sub-section (*1*);

(*b*) in the sub-section so numbered,—

(*i*) for the words "A power conferred by the mortgage-deed on the mortgagee, or on any person on his behalf, to sell or concur in selling, in default of payment of the mortgage-money, the mortgaged property, or any part thereof, without the intervention of the Court, is valid in the following cases and in no others, namely:—" the following words shall be substituted, namely:—

Notwithstanding anything contained in the Trustees' and Mortgagees' Powers Act, 1866, a mortgagee, or any person acting on his behalf, shall, subject to the provisions of this section, have power to sell or concur in selling the mortgaged property, or any part thereof, in default of payment of the mortgage-money, without the intervention of the Court, in the following cases and in no others, namely:—"; XXVIII of 1866.

(*ii*) in each of clauses (*b*) and (*c*), after the word "where" the words "a power of sale without the intervention of the Court is expressly conferred on the mortgagee by the mortgage-deed, and" shall be inserted; and

(*iii*) in clause (*c*), for the word "is" the words "was, on the date of the execution of the mortgage-deed," shall be substituted, and after the words "any other town" the words "or area" shall be inserted;

(*c*) the word "But" in the beginning of the second paragraph shall be omitted, and the said paragraph ending with the words "after becoming due," shall be numbered as sub-section (*2*), and clauses (1) and (2) of the said paragraph shall be lettered as (*a*) and (*b*), respectively;

(*d*) the third paragraph beginning with the words "When a sale has been made" and ending with the words "exercising the power," shall be numbered as sub-section (*3*);

(*e*) the fourth paragraph beginning with the words "The money which is received" and ending with the words "of the sale thereof," shall be numbered as sub-section (*4*);

(*f*) for the fifth paragraph beginning with the words "Nothing in the former part" and ending with the words "comes into force" the following sub-section shall be substituted, namely:—

"(*5*) Nothing in this section or in section 69A applies to powers conferred before the first day of July, 1882"; and

(*g*) the last paragraph beginning with the words "The powers and provisions" and ending with the words "local official Gazette," shall be omitted.

Insertion of new section 69A in Act IV of 1882.

35. After section 69 of the said Act the following section shall be inserted, namely:—

Appointment of receiver.

"69A. (*1*) A mortgagee having the right to exercise a power of sale under section 69, shall, subject to the provisions of sub-section (*2*), be entitled to appoint, by writing signed by him or on his behalf, a receiver of the income of the mortgaged property or any part thereof.

(*2*) Any person who has been named in the mortgage-deed and is willing and able to act as receiver may be appointed by the mortgagee.

If no person has been so named, or if all persons named are unable or unwilling to act, or are dead, the mortgagee may appoint any person to whose appointment the mortgagor agrees; failing such agreement, the mortgagee shall be entitled to apply to the Court for the appointment of a receiver, and any person appointed by the Court shall be deemed to have been duly appointed by the mortgagee.

A receiver may at any time be removed by writing signed by or on behalf of the mortgagee and the mortgagor, or by the Court on application made by either party and on due cause shown.

A vacancy in the office of receiver may be filled in accordance with the provisions of this sub-section.

(*3*) A receiver appointed under the powers conferred by this section shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults, unless the mortgage-deed otherwise provides or unless such acts or defaults are due to the improper intervention of the mortgagee.

(*4*) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by suit, execution or otherwise, in the name either of the mortgagor or of the mortgagee to the full extent of the interest which the mortgagor could dispose of, and to give valid receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee in accordance with the provisions of this section.

(*5*) A person paying money to the receiver shall not be concerned to inquire if the appointment of the receiver was valid or not.

(*6*) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges and expenses incurred by him as receiver, a commission at such rate not exceeding five per cent. on the gross amount of all money received as is specified in his appointment, and, if no rate is so specified, then at the rate of five per cent. on that gross amount, or at such other rates as the Court thinks fit to allow, on application made by him for that purpose.

(*7*) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured, and keep insured against loss or damage by fire, out of the money received by him, the mortgaged property or any part thereof being of an insurable nature.

(*8*) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:—

"(*i*) in discharge of all rents, taxes, land revenue, rates and outgoings whatever affecting the mortgaged property;

(*ii*) in keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver;

(*iii*) in payment of his commission, and of the premiums on fire, life or other insurances, if any, properly payable under the mortgage-deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee;

(*iv*) in payment of the interest falling due under the mortgage;

(*v*) in or towards discharge of the principal money, if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

(*9*) The provisions of sub-section (*1*) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-sections (*3*) to (*8*) inclusive may be varied or extended by the motgage-deed, and, as so varied or extended, shall, as far as may be, operate in like manner and with all the like incidents, effects and consequences, as if such variations or extensions were contained in the said sub-sections.

(*10*) Application may be made, without the institution of a suit, to the Court for its opinion, advice or direction on any present question respecting the management or administration of the mortgaged property, other than questions of difficulty or importance not proper in the opinion of the Court for summary disposal. A copy of such application shall be served upon, and the hearing thereof may be attended by, such of the persons interested in the application as the Court may think fit.

The costs of every application under this sub-section shall be in the discretion of the Court.

(*11*) In this section, "the Court" means the Court which would have jurisdiction in a suit to enforce the mortgage."

Amendment of section 71, Act IV of 1882.

36. In section 71 of the said Act, the words "for a term of years" shall be omitted.

Amendment of section 72, Act IV of 1882.

37. In section 72 of the said Act,—

(*a*) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted;

(*b*) clause (*a*) shall be omitted;

(*c*) in clause (*b*), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;

(*d*) after the words "nine per cent. per annum" the following proviso shall be inserted, namely:—

"Provided that the expenditure of money by the mortgagee under clause (*b*) or clause (*c*) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title"; and

(*e*) for the words "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate" the following shall be substituted, namely:—

"added to the principal money with interest at the same rate as is payable on the principal money or, where no such rate is fixed, at the rate of nine per cent. per annum."

Substitution of new section for section 73, Act IV of 1882.

38. For section 73 of the said Act the following section shall be substituted, namely:—

Right to proceeds of revenue sale or compensation on acquisition.

"73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus of the sale-proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force providing for the compulsory acquisition of immoveable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation. I of 1894.

(3) Such claims shall prevail against all other claims except those of prior encumbrancers, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

Omission of sections 74 and 75, Act IV of 1882.

39. Section 74 and section 75 of the said Act shall be omitted.

Amendment of section 76, Act IV of 1882.

40. In section 76 of the said Act,—

(*a*) in clause (*c*), after the words "charges of a public nature" the words "and all rent" shall be inserted;

(*b*) in clause (*h*), after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted, and the words "on the mortgage-money" shall be omitted; and

(*c*) in clause (*i*), the word "gross" shall be omitted, and after the words "as the case may be" the following shall be inserted, namely:—

"and shall not be entitled to deduct any amount therefrom on account of any expenses incurred after such date or time in connection with the mortgaged property."

Omission of section 80, Act IV of 1882.

41. Section 80 of the said Act shall be omitted.

Substitution of new section for section 81, Act, IV of 1882.

42. For section 81 of the said Act the following section shall be substituted, namely:—

Marshalling securities.

"81. If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of a contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties."

Amendment of section 82, Act IV of 1882.

43. In section 82 of the said Act,—

(*a*) for the first paragraph beginning with the words "Where several properties," and ending with the words "date of the mortgage" the following shall be substituted, namely:—

"Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute rateably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date"; and

(*b*) in the third paragraph, for the word "second" the word "subsequent" shall be substituted.

Amendment of section 83, Act IV of 1882.

44. In section 83 of the said Act,—

(*a*) for the words "has become payable" the words "payable in respect of any mortgage has become due" shall be substituted;

(*b*) for the words "if then in his possession or power" the words "and all documents in his possession or power relating to the mortgaged property" shall be substituted;

(*c*) after the word "mortgage-deed," where it occurs for the second time, the words "and all such other documents" shall be inserted; and

(*d*) the following paragraph shall be added after the words "such other person as aforesaid," namely:—

"Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished."

Amendment of section 34, Act IV of 1882.

45. In section 84 of the said Act,—

(*a*) after the words "from the date of the tender or" the words "in the case of a deposit, where no previous tender of such amount has been made," shall be inserted;

(*b*) for the words "as the case may be" the following shall be substituted, namely:—

"and the notice required by section 83 has been served on the mortgagee:

Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal"; and

(*c*) after the words "tender of the mortgage-money" the words "and such notice has not been given before the making of the tender or deposit, as the case may be" shall be added.

Substitution of new section for section 91, Act IV of 1882.

46. For section 91 of the said Act the following section shall be substituted, namely:—

Persons who may sue for redemption.

"91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely:—

(*a*) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same;

(*b*) any surety for the payment of the mortgage-debt or any part thereof; or

(*c*) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property."

Insertion of new sections 92, 93 and 94 in Act IV of 1882.

47. After section 91 of the said Act the following sections shall be inserted, namely:—

Subrogation.

"92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be so subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

Prohibition of tacking.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and, except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Rights of mesne mortgagee.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Substitution of new sections for section 95, Act IV of 1882.

48. For section 95 of the said Act the following sections shall be substituted, namely:—

Right of redeeming co-mortgagor to expenses.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

Mortgage by deposit of title-deeds.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds."

Amendment of section 98, Act IV of 1882.

49. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms", the words "an anomalous mortgage" shall be substituted.

Amendment of section 100, Act IV of 1882.

50. In section 100 of the said Act,—

(*a*) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(*b*) after the words "in the execution of his trust" the following words shall be added, namely:—

"and, save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

Substitution of new section for section 101, Act IV of 1882

51. For section 101 of the said Act the following section shall be substituted, namely:—

No merger in case of subsequent encumbrance.

"101. Any mortgagee of, or person having a charge upon, immoveable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

Amendment of section 102, Act IV of 1882.

52. In section 102 of the said Act,—

(*a*) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known", shall be substituted;

(*b*) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made";

(*c*) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where no person or agent to whom such tender should be made can be found or is known", shall be substituted; and

(*d*) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

Amendment of section 103, Act IV of 1882.

53. In section 103 of the said Act,—

(*a*) after the words "such notice may be served", the words "on or by" shall be inserted; and

(*b*) for the words and figures "Chapter XXXI of the Code of Civil Procedure" the words and figures "Order XXXII in the First Schedule to the Code of Civil Procedure, 1908," shall be substituted. V of 1908.

Amendment of section 106, Act IV of 1882.

54. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party".

Amendment of section 107, Act IV of 1882.

55. In section 107 of the said Act, after the words "by delivery of possession", where they first occur, the following paragraph shall be inserted, namely:—

"Where a lease of immoveable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee."

Amendment of section 108, Act IV of 1882.

56. In section 108 of the said Act,—

(*a*) in clause (*h*)—

(*i*) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(*ii*) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(*b*) in clause (*o*), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

Amendment of section 111, Act IV of 1882.

57. In clause (*g*) of section 111 of the said Act,—

(*a*) the words "or the lease shall become void" shall be omitted;

(*b*) after the words "title in himself" the following shall be inserted, namely:—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(*c*) for the words "either case" the words "any of these cases" shall be substituted; and

(*d*) for the words "does some act showing" the words "gives notice in writing to the lessee of" shall be substituted.

Insertion of new section 114A in Act IV of 1882.

58. After section 114 of the said Act the following section shall be inserted, namely:—

Relief against forfeiture in certain other cases.

"114A. Where a lease of immoveable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(*a*) specifying the particular breach complained of; and

(*b*) if the breach is capable of remedy, requiring the lessee to remedy the breach;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

Substitution of new section for section 119, Act IV of 1882.

59. For section 119 of the said Act the following section shall be substituted, namely:—

Right of party deprived of thing received in exchange.

"119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

Amendment of section 128, Act IV of 1882.

60. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment of section 129, Act IV of 1882.

61. In section 129 of the said Act, the words "or, save as provided by section 123, any rule of Hindu or Buddhist law" shall be omitted.

Amendment of section 130, Act IV of 1882.

62. In section 130 of the said Act,—

(*a*) after the words "The transfer of an actionable claim" the words "whether with or without consideration", shall be inserted; and

(*b*) the words "and notwithstanding anything contained in section 123", shall be omitted.

Saving clause.

63. Nothing in any of the following provisions of this Act, namely, sections 3, 4, 9, 10, 15, 18, 19, 27, 30, clause (*c*) of section 31, sections 32, 33, 34, 35, 46, 52, 55, 57, 58, 59, 61 and 62 shall be deemed in any way to affect—

(*a*) the terms or incidents of any transfer of property made or effected before the first day of April, 1930,

(*b*) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(*c*) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(*d*) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of April, 1930, in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

L. GRAHAM,
Secy. to the Govt. of India.

GOVERNMENT OF INDIA.

Legislative Department.

The following Act of the Indian Legislature received the assent of the Governor General on the 4th October, 1929, and is hereby promulgated for general information:—

ACT No. XXI OF 1929.

An Act to supplement the Transfer of Property (Amendment) Act, 1929.

WHEREAS by reason of the passing of the Transfer of Property (Amendment) Act, 1929, it is expedient that certain amendments should be made in certain other enactments; It is hereby enacted as follows:— XX of 19.9.

Short title and commencement.

1. (*1*) This Act may be called the Transfer of Property (Amendment) Supplementary Act, 1929.

(*2*) It shall come into force on the first day of April, 1930.

Amendment of section 8, Act III of 1874.

2. For the proviso to section 8 of the Married Women's Property Act, 1874, the following proviso shall be substituted, namely:— III of 1874.

"Provided that nothing herein contained shall—

(*a*) entitle such person to recover anything by attachment and sale or otherwise out of any property which has been transferred to a woman or for her benefit on condition that she shall have no power during her marriage to transfer or charge the same or her beneficial interest therein, or

(*b*) affect the liability of a husband for debts contracted by his wife's agency expressed or implied."

Insertion of new section 27A in Act I of 1877.

3. After section 27 of the Specific Relief Act, 1877, the following section shall be inserted, namely:— I of 1877.

Specific performance in case of part performance of contract to lease.

"27A. Subject to the provisions of this Chapter, where a contract to lease immoveable property is made in writing signed by the parties thereto or on their behalf, either party may, notwithstanding that the contract, though required to be registered, has not been registered, sue the other for specific performance of the contract if,—

(*a*) where specific performance is claimed by the lessor, he has delivered possession of the property to the lessee in part performance of the contract; and

(*b*) where specific performance is claimed by the lessee, he has in part performance of the contract, taken possession of the property, or, being already in possession, continues in possession in part performance of the contract, and has done some act in furtherance of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof.

This section applies to contracts to lease executed after the first day of April, 1930."

Substitution of new rules for rules 2 to 8, Order XXXIV, Schedule I, Act V of 1908.

4. In Order XXXIV in the First Schedule to the Code of Civil Procedure, 1908, for rules 2 to 8 the following rules shall be substituted, namely:— V of 1908.

Preliminary decree in foreclosure suit.

"2. (*1*) In a suit for foreclosure, if the plaintiff succeeds, the Court shall pass a preliminary decree—

(*a*) ordering that an account be taken of what was due to the plaintiff at the date of such decree for—

(*i*) principal and interest on the mortgage,

(*ii*) the costs of suit, if any, awarded to him, and

(*iii*) other costs, charges and expenses properly incurred by him up to that date in respect of his mortgage-security, together with interest thereon; or

(*b*) declaring the amount so due at that date; and

(*c*) directing—

(*i*) that, if the defendant pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (*a*), or from the date on which such amount is declared in Court under clause (*b*), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the plaintiff shall deliver up to the defendant, or to such person as the defendant appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the defendant at his cost free from the mortgage and from all incumbrances created by the plaintiff or any person claiming under him, or, where the plaintiff claims by derived title, by those under whom he claims, and shall also, if necessary, put the defendant in possession of the property; and

(*ii*) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the defendant fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the plaintiff shall be entitled to apply for a final decree debarring the defendant from all right to redeem the property.

(*2*) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (*1*) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

(*3*) Where, in a suit for foreclosure, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9 or Form No. 10, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in foreclosure suit.

3. (*1*) Where, before a final decree debarring the defendant from all right to redeem the mortgaged property has been passed, the defendant makes payment into Court of all amounts due from him under sub-rule (*1*) of rule 2, the Court shall, on application made by the defendant in this behalf, pass a final decree—

(*a*) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(*b*) ordering him to re-transfer at the cost of the defendant the mortgaged property as directed in the said decree,

and, also, if necessary,—

(*c*) ordering him to put the defendant in possession of the property.

(*2*) Where payment in accordance with sub-rule (*1*) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree declaring that the defendant and all persons claiming through or under him are debarred from all right to redeem the mortgaged property and also, if necessary, ordering the defendant to put the plaintiff in possession of the property.

(*3*) On the passing of a final decree under sub-rule (*2*), all liabilities to which the defendant is subject in respect of the mortgage or on account of the suit shall be deemed to have been discharged.

Preliminary decree in suit for sale.

4. (*1*) In a suit for sale, if the plaintiff succeeds, the Court shall pass a preliminary decree to the effect mentioned in clauses (*a*), (*b*) and (*c*) (*i*) of sub-rule (*1*) of rule 2, and further directing that, in default of the defendant paying as therein mentioned, the plaintiff shall be entitled to apply for a final decree directing that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what has been found or declared under or by the

preliminary decree due to the plaintiff, together with such amount as may have been adjudged due in respect of subsequent costs, charges, expenses and interest, and the balance, if any, be paid to the defendant or other persons entitled to receive the same.

(2) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before a final decree for sale is passed, extend the time fixed for the payment of the amount found or declared due under sub-rule (1) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Power to decree sale in foreclosure suit.

(3) In a suit for foreclosure in the case of an anomalous mortgage, if the plaintiff succeeds, the Court may, at the instance of any party to the suit or of any other person interested in the mortgage-security or the right of redemption, pass a like decree (in lieu of a decree for foreclosure) on such terms as it thinks fit, including the deposit in Court of a reasonable sum fixed by the Court to meet the expenses of the sale and to secure the performance of the terms.

(4) Where, in a suit for sale or a suit for foreclosure in which sale is ordered, subsequent mortgagees or persons deriving title from, or subrogated to the rights of, any such mortgagees are joined as parties, the preliminary decree referred to in sub-rule (1) shall provide for the adjudication of the respective rights and liabilities of the parties to the suit in the manner and form set forth in Form No. 9, Form No. 10 or Form No. 11, as the case may be, of Appendix D with such variations as the circumstances of the case may require.

Final decree in suit for sale.

5. (1) Where, on or before the day fixed or at any time before the confirmation of a sale made in pursuance of a final decree passed under sub-rule (3) of this rule, the defendant makes payment into Court of all amounts due from him under sub-rule (1) of rule 4, the Court shall, on application made by the defendant in this behalf, pass a final decree or, if such decree has been passed, an order—

(a) ordering the plaintiff to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(b) ordering him to transfer the mortgaged property as directed in the said decree.

and, also, if necessary,—

(c) ordering him to put the defendant in possession of the property.

(2) Where the mortgaged property or part thereof has been sold in pursuance of a decree passed under sub-rule (3) of this rule, the Court shall not pass an order under sub-rule (1) of this rule, unless the defendant, in addition to the amount mentioned in sub-rule (1), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made, the Court shall, on application made by the plaintiff in this behalf, pass a final decree directing that the mortgaged property or a sufficient part thereof be sold, and that the proceeds of the sale be dealt with in the manner provided in sub-rule (1) of rule 4.

Recovery of balance due on mortgage in suit for sale.

6. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the plaintiff, the Court, on application by him, may, if the balance is legally recoverable from the defendant otherwise than out of the property sold, pass a decree for such balance.

Preliminary decree in redemption suit.

7. (1) In a suit for redemption, if the plaintiff succeeds, the Court shall pass a preliminary decree—

(a) ordering that an account be taken of what was due to the defendant at the date of such decree for—

(i) principal and interest on the mortgage,

(ii) the costs of suit, if any, awarded to him, and

(iii) other costs, charges and expenses properly incurred by him up to that date, in respect of his mortgage-security, together with interest thereon; or

(*b*) declaring the amount so due at that date; and

(*c*) directing—

(*i*) that, if the plaintiff pays into Court the amount so found or declared due on or before such date as the Court may fix within six months from the date on which the Court confirms and countersigns the account taken under clause (*a*), or from the date on which such amount is declared in Court under clause (*b*), as the case may be, and thereafter pays such amount as may be adjudged due in respect of subsequent costs, charges and expenses as provided in rule 10, together with subsequent interest on such sums respectively as provided in rule 11, the defendant shall deliver up to the plaintiff, or to such person as the plaintiff appoints, all documents in his possession or power relating to the mortgaged property, and shall, if so required, re-transfer the property to the plaintiff at his cost free from the mortgage and from all incumbrances created by the defendant or any person claiming under him, or, where the defendant claims by derived title, by those under whom he claims, and shall also, if necessary, put the plaintiff in possession of the property; and

(*ii*) that, if payment of the amount found or declared due under or by the preliminary decree is not made on or before the date so fixed, or the plaintiff fails to pay, within such time as the Court may fix, the amount adjudged due in respect of subsequent costs, charges, expenses and interest, the defendant shall be entitled to apply for a final decree—

(*a*) in the case of a mortgage other than a usufructuary mortgage, a mortgage by conditional sale, or an anomalous mortgage the terms of which provide for foreclosure only and not for sale, that the mortgaged property be sold, or

(*b*) in the case of a mortgage by conditional sale or such an anomalous mortgage as aforesaid, that the plaintiff be debarred from all right to redeem the property.

(*2*) The Court may, on good cause shown and upon terms to be fixed by the Court, from time to time, at any time before the passing of a final decree for foreclosure or sale, as the case may be, extend the time fixed for the payment of the amount found or declared due under sub-rule (*1*) or of the amount adjudged due in respect of subsequent costs, charges, expenses and interest.

Final decree in redemption suit.

8. (*1*) Where, before a final decree debarring the plaintiff from all right to redeem the mortgaged property has been passed or before the confirmation of a sale held in pursuance of a final decree passed under sub-rule (*3*) of this rule, the plaintiff makes payment into Court of all amounts due from him under sub-rule (*1*) of rule 7, the Court shall, on application made by the plaintiff in this behalf, pass a final decree or, if such decree has been passed, an order—

(*a*) ordering the defendant to deliver up the documents referred to in the preliminary decree,

and, if necessary,—

(*b*) ordering him to re-transfer at the cost of the plaintiff the mortgaged property as directed in the said decree,

and, also, if necessary,—

(*c*) ordering him to put the plaintiff in possession of the property.

(*2*) Where the mortgaged property or a part thereof has been sold in pursuance of a decree passed under sub-rule (*3*) of this rule, the Court shall not pass an order under sub-rule (*1*) of this rule, unless the plaintiff, in addition to the amount mentioned in sub-rule (*1*), deposits in Court for payment to the purchaser a sum equal to five per cent. of the amount of the purchase-money paid into Court by the purchaser.

Where such deposit has been made, the purchaser shall be entitled to an order for repayment of the amount of the purchase-money paid into Court by him, together with a sum equal to five per cent. thereof.

(3) Where payment in accordance with sub-rule (1) has not been made the Court shall, on application made by the defendant in this behalf,—

(a) in the case of a mortgage by conditional sale or of such an anomalous mortgage as is hereinbefore referred to in rule 7, pass a final decree declaring that the plaintiff and all persons claiming under him are debarred from all right to redeem the mortgaged property and, also, if necessary, ordering the plaintiff to put the defendant in possession of the mortgaged property; or

(b) in the case of any other mortgage, not being a usufructuary mortgage, pass a final decree that the mortgaged property or a sufficient part thereof be sold, and the proceeds of the sale (after deduction therefrom of the expenses of the sale) be paid into Court and applied in payment of what is found due to the defendant, and the balance, if any, be paid to the plaintiff or other persons entitled to receive the same."

Insertion of new rule 8A in Order XXXIV, Schedule I, Act V of 1908.

5. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, after rule 8 the following rule shall be inserted, namely:— V of 1908.

Recovery of balance due on mortgage in suit for redemption.

"8A. Where the net proceeds of any sale held under the last preceding rule are found insufficient to pay the amount due to the defendant, the Court, on application by him, may, if the balance is legally recoverable from the plaintiff otherwise than out of the property sold, pass a decree for such balance."

Substitution of new rule for rules 10 and 11 of Order XXXIV, Schedule I, Act V of 1908.

6. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rules 10 and 11 the following rules shall be substituted, namely:— V of 1908.

Costs of mortgagee subsequent to decree.

"10. In finally adjusting the amount to be paid to a mortgagee in case of a foreclosure, sale or redemption, the Court shall, unless in the case of costs of the suit the conduct of the mortgagee has been such as to disentitle him thereto, add to the mortgage-money such costs of the suit and other costs, charges and expenses as have been properly incurred by him since the date of the preliminary decree for foreclosure, sale or redemption up to the time of actual payment.

Payment of interest.

11. In any decree passed in a suit for foreclosure, sale or redemption, where interest is legally recoverable, the Court may order payment of interest to the mortgagee as follows, namely:—

(a) interest up to the date on or before which payment of the amount found or declared due is under the preliminary decree to be made by the mortgagor or other person redeeming the mortgage—

(i) on the principal amount found or declared due on the mortgage, —at the rate payable on the principal, or, where no such rate is fixed, at such rate as the Court deems reasonable,

(ii) on the amount of the costs of the suit awarded to the mortgagee, —at such rate as the Court deems reasonable from the date of the preliminary decree, and

(iii) on the amount adjudged due to the mortgagee for costs, charges and expenses properly incurred by the mortgagee in respect of the mortgage-security up to the date of the preliminary decree and added to the mortgage-money,—at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or failing both such rates, at nine per cent. per annum; and

(b) subsequent interest up to the date of realization or actual payment at such rate as the Court deems reasonable—

(i) on the aggregate of the principal sums specified in clause (a) and of the interest thereon as calculated in accordance with that clause; and

(ii) on the amount adjudged due to the mortgagee in respect of such further costs, charges and expenses as may be payable under rule 10."

Substitution of new rule for rule 15, Order XXXIV, Schedule I, Act V of 1908.

7. In Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, for rule 15 the following rule shall be substituted, namely:— V of 1908.

"15. All the provisions contained in this Order which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds within the meaning of section 58, and to a charge within the meaning of section 100 of the Transfer of Property Act, 1882." IV of 1882.

Mortgages by the deposit of title-deeds and charges.

Substitution of new Forms for Forms 3 to 11 in Appendix D, Schedule I, Act V of 1908.

8. For Forms 3 to 11 in Appendix D to the First Schedule to the Code of Civil Procedure, 1908, the Forms set forth in the Schedule shall be substituted. V of 1908

Amendment of Act IX of 1908.

9. In article No. 132 in the First Division of the First Schedule to the Indian Limitation Act, 1908, the following clause shall be added after clause (*b*) of the Explanation, namely:— IX of 1909.

"and

(*c*) advances secured by mortgage by deposit of title-deeds."

Amendment of Act XVI of 1908.

10. (*1*) In section 17 of the Indian Registration Act, 1908,— XVI of 1908.

(*a*) after clause (*d*) of sub-section (*1*) the following clause shall be added, namely:—

"(*e*) non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property"; and

(*b*) in clause (*vi*) of sub-section (*2*) for the words "and any award" the words "except a decree or order expressed to be made on a compromise and comprising immoveable property other than that which is the subject-matter of the suit or proceeding" shall be substituted.

(*2*) In section 48 of the same Act, after the words "or followed by delivery of possession" the following words shall be added, namely:—

"and the same constitutes a valid transfer under any law for the time being in force:

Provided that a mortgage by deposit of title-deeds as defined in section 58 of the Transfer of Property Act, 1882, shall take effect against any mortgage-deed subsequently executed and registered which relates to the same property." IV of 1882.

(*3*) In section 49 of the same Act—

(*a*) after the word and figures "section 17" the words "or by any provision of the Transfer of Property Act, 1882," shall be inserted; and IV of 1882.

(*b*) to that section the following proviso shall be added, namely:—

"Provided that an unregistered document affecting immoveable property and required by this Act or the Transfer of Property Act, 1882, to be registered may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877, or as evidence of part performance of a contract for the purposes of section 53A of the Transfer of Property Act, 1882, or as evidence of any collateral transaction not required to be effected by registered instrument." IV of 1882. I of 1877. IV of 1882.

Amendment of Madras Act I of 1914.

11. In the Hindu Transfers and Bequests Act, 1914, for sections 3, 4 and 5 the following sections shall be substituted, namely:— Mad. Act I of 1914.

Disposition for the benefit of person not in existence.

"3. Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not born at the date of such disposition.

Limitations and conditions.

4. The limitations and provisions referred to in section 3 shall be the following, namely:—

(*a*) in respect of dispositions by transfers *inter vivos*, those contained in Chapter II of the Transfer of Property Act, 1882, and IV of 1882.

(*b*) in respect of dispositions by will, those contained in sections 113, 114, 115 and 116 of the Indian Succession Act, 1925." XXXIX of 1925.

Amendment of Act XV of 1916.

12. (*1*) In section 3 of the Hindu Disposition of Property Act, 1916,— XV of 1916.

(*a*) in clause (*a*), for the words and figures "sections 13, 14 and 20" the word and figure "Chapter II" shall be substituted, and

(*b*) in clause (*b*), for the words and figures "sections 100 and 101 of the Indian Succession Act, 1865" the words and figures sections 113, 114, 115 and 116 of the Indian Succession Act, 1925," shall be substituted. X of 1865. XXXIX of 1925.

(*2*) Section 4 of the same Act shall be omitted.

Amendment of Act VIII of 1921.

13. In the Hindu Transfers and Bequests (City of Madras) Act, 1921, for sections 3, 4 and 5 the following sections shall be substituted, namely:— VIII of 1921.

Disposition for the benefit of person not in existence.

"3. Subject to the limitations and provisions specified in this Act, no disposition of property by a Hindu, whether by transfer *inter vivos* or by will, shall be invalid by reason only that any person for whose benefit it may have been made was not born at the date of such disposition.

Limitations and conditions.

4. The limitations and provisions referred to in section 3 shall be the following, namely:—

(*a*) in respect of disposition by transfers *inter vivos*, those contained in Chapter II of the Transfer of Property Act, 1882, and IV of 1882.

(*b*) in respect of dispositions by will, those contained in sections 113, 114, 115 and 116 of the Indian Succession Act, 1925." XXXIX of 1925.

Amendment of Act XXXIX of 1925.

14. (*1*) In section 115 of the Indian Succession Act, 1925,— XXXIX of 1925.

(*a*) for the words "wholly void" the words "void in regard to those persons only and not in regard to the whole class" shall be substituted;

(*b*) in *Illustration* (*i*), for the words "and, as it is given to all his children as a class, it is not good as to any division of that class, but is wholly void" the following words shall be substituted, namely:—

"and in regard to those who do not attain the age of 25 within 18 years after A's death, but is operative in regard to the other children of A"; and

(*c*) in *Illustration* (*ii*), for the words "The mention of B, C and D by name does not prevent the bequest from being regarded as a bequest to a class, and the bequest is wholly void" the following words shall be substituted, namely:—

"Although the mention of B, C and D does not prevent the bequest from being regarded as a bequest to a class, it is not wholly void. It is operative as regards any of the children B, C or D, who attains the age of 25 within 18 years after A's death."

(2) For section 116 of the same Act the following section shall be substituted, namely:—

Bequest to take effect on failure of prior bequest.

"116. Where by reason of any of the rules contained in sections 113 and 114, any bequest in favour of a person or of a class of persons is void in regard to such person or the whole of such class, any bequest contained in the same will and intended to take effect after or upon failure of such prior bequest is also void."

(3) For section 117 of the same Act and the *Illustration* thereto the following section shall be substituted, namely:—

Effect of direction for accumulation.

"117. (1) Where the terms of a will direct that the income arising from any property shall be accumulated either wholly or in part during any period longer than a period of eighteen years from the death of the testator, such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the aforesaid period, and at the end of such period of eighteen years the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

(i) the payment of the debts of the testator or any other person taking any interest under the will, or

(ii) the provision of portions for children or remoter issue of the testator or of any other person taking any interest under the will, or

(iii) the preservation or maintenance of any property bequeathed;

and such direction may be made accordingly."

(4) In Schedule III to the same Act, after the figures and comma '116,' the figures and comma '117,' shall be inserted.

Savings.

15. (1) Save as provided in sub-section (2), nothing in this Act shall be deemed to affect—

(a) the terms or incidents of any transfer or disposition of property made or effected before the first day of April, 1930;

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date;

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date;

(d) any remedy or proceeding in respect of such right, title, obligation or liability; or

(e) anything done in the course of any proceeding pending in any Court on the aforesaid date;

and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

(2) Notwithstanding anything contained in section 9 of this Act, in the Presidency of Bombay and such other territories as the Governor General in Council may, by notification in the Gazette of India, specify in this behalf, a suit by a mortgagee for foreclosure or sale on a mortgage by deposit of title-deeds may be instituted within two years from the date of the commencement of this Act, or within sixty years from the date when the money secured by the mortgage became due, whichever period expires first; and no such suit instituted within the said period of sixty years and pending at the date of the commencement of this Act, either in a Court of first instance or of appeal, shall be dismissed on the ground that the twelve years' rule of limitation is applicable.

SCHEDULE.

(*See section 8.*)

FORM No. 3.

Preliminary decree for foreclosure.

(Order XXXIV, rule 2.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(*i*) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (*iii*) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objection as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the defendant do pay into Court on or before the day of , or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs. for the costs of the suit awarded to the plaintiff;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to

such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 3A.

Preliminary decree for foreclosure.

(Order XXXIV, rule 2.—Where the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage security, together with interest thereon, and the sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(*i*) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court of the said sum of Rs. ;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 4.

Final decree for foreclosure.

(Order XXXIV, rule 3.)

(TITLE.) ..

Upon reading the preliminary decree passed in this suit on the day of and further orders (if any) dated the day of and the application of the plaintiff dated the day of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage:

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned;* [and (*if the defendant be in possession of the said mortgaged property*) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

FORM No. 5.

Preliminary decree for sale.

(Order XXXIV, rule 4.—Where accounts are directed to be taken.)

(TITLE.)

This suit coming on this day, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following:—

(*i*) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(*ii*) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(*iii*) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal or, failing both such rates, at nine per cent. per annum);

(*iv*) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

* Words not required to be deleted.

2. And it is hereby further ordered and decreed that any amount received under clause (*ii*) or adjudged due under clause (*iv*) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (*iii*), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of , and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(*i*) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the plaintiff;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

SCHEDULE.

Description of the mortgaged property.

FORM No. 5A.

Preliminary decree for sale.

(Order XXXIV, rule 4.—When the Court declares the amount due.)

(TITLE.)

This suit coming on this day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for Principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the plaintiff, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(*i*) that the defendant do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, the said sum of Rs. ;

(*ii*) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.